

Public Hearing
STATE WATER RESOURCES CONTROL BOARD
STATE OF CALIFORNIA

---o0o---

Subject: El Dorado Project Proposed by
El Dorado County Water Agency and El Dorado Irrigation District,
Applications 29919, 29920, 29921 and 29922,
Petition for Partial Assignment of State Filed Application 5645

---o0o---

Held in
Bonderson Building
Sacramento, California

---o0o---

Monday, June 16, 1993
9:00 a.m.

VOLUME III

A L I C E B O O K
CERTIFIED SHORTHAND REPORTER
24122 MARBLE QUARRY ROAD
COLUMBIA, CALIFORNIA 95310

PHONES: 916 457-7326 & 209 532-2018

A P P E A R A N C E S

Board Member:

JAMES STUBCHAER

Staff:

BARBARA KATZ, Counsel
MIKE FALKENSTEIN, Environmental Specialist
JIM CANADAY, Environmental Specialist
TOM LAVENDA, Engineer

Counsel and Representations:

STUART SOMACH
Attorney at Law
1755 Creek Side Oaks Drive, Suite 290
Sacramento, CA 95833
representing EL DORADO COUNTY WATER AGENCY
and EL DORADO IRRIGATION DISTRICT

PAUL BARTKIEWITZ
Attorney at Law
1011 - 22nd Street
Sacramento, CA
Special Counsel to EL DORADO IRRIGATION DISTRICT

RICHARD H. MOSS
Attorney at Law
P. O. Box 7442
San Francisco, CA 94120
representing PACIFIC GAS & ELECTRIC COMPANY

ANNETTE FARAGLIA
Attorney at Law
77 Beale Street
San Francisco, CA 94102
representing PACIFIC GAS & ELECTRIC COMPANY

APPEARANCES continued

KEVIN O'BRIEN

Attorney at Law

555 Capitol Mall

Sacramento, CA

representing SACRAMENTO MUNICIPAL UTILITY DISTRICT

STEVEN M. COHN

Attorney at Law

6201 S Street, MS-42

Sacramento, CA 95817-1899

JAMES E. TURNER

Regional Solicitor's Office

Pacific Southwest Region

2800 Cottage Way, Room E-2753

Sacramento, CA 95825

representing U. S. BUREAU OF RECLAMATION

ELLEN PETER

Attorney General's Office

1515 K Street

Sacramento, CA 95814

representing DEPARTMENT OF FISH AND GAME

ERICA NIEBAUER

Assistant Regional Solicitor's Office

Pacific Southwest Region

Department of the Interior

2800 Cottage Way, Room E-2753

Sacramento, CA 95825

representing U. S. FISH AND WILDLIFE SERVICE

STEPHEN C. VOLKER

Attorney at Law

180 Montgomery Street, Suite 1400

San Francisco, CA 94104-4209

representing SIERRA CLUB LEGAL DEFENSE FUND,

LEAGUE TO SAVE SIERRA LAKES

49er COUNCIL OF BOYS SCOUTS OF AMERICA

PLASSE HOME OWNERS ASSOCIATION

KIT CARSON LODGE

CAPLES LAKE RESORT

KIRKWOOD ASSOCIATES

KIRKWOOD MEADOWS PUBLIC UTILITIES DISTRICT

NORTHERN SIERRA SUMMER HOME OWNERS ASSOCIATION
EAST SILVER LAKE IMPROVEMENT ASSOCIATION

APPEARANCES continued

SOUTH SILVER LAKE HOMEOWNERS ASSOCIATION
CAPLES LAKE HOMEOWNERS ASSOCIATION
LAKE KIRKWOOD ASSOCIATES
SILVER LAKE WATER COMPANY
PLASSE RESORT
ALPINE COUNTY
and Co-counsel with Make Jackson for
CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

MICHAEL JACKSON
Attorney at Law
P. O. Box 207
Quincy, California 95971
representing CALIFORNIA SPORTFISHING PROTECTION
ALLIANCE and FRIENDS OF THE RIVER

DANIEL GALLERY
Attorney at Law
926 J Street
Sacramento, CA 95814
representing AMADOR COUNTY

JOHN HAHN
Attorney at Law
Courthouse, 108 Court Street
Jackson, CA 95642
representing AMADOR COUNTY

PAUL J. CREGER
501 Magnolia Lane
Santa Clara, CA 95051
representing self

FELIX SMITH
P. O. Box 19464
Sacramento, CA 95819
representing SAVE THE AMERICAN RIVER

1 WEDNESDAY, JUNE 16, 1993, 9:00 A.M.

2 --o0o--

3 MR. STUBCHAER: Good morning. We will resume the El
4 Dorado water rights hearing.

5 We were on cross-examination of Fish and Game, and
6 we have one remaining party to cross-examine, Mr. Somach.

7 MR. SOMACH: I don't have very many questions and I
8 do appreciate being able to do that today. I appreciate
9 all of you coming back.

10 CROSS-EXAMINATION

11 by MR. SOMACH:

12 Q Now, from reviewing the written testimony and based
13 upon the testimony yesterday, it is my understanding that
14 the Department of Fish and Game has some problems with the
15 existing operation of the PG&E facilities under License
16 184; is that correct?

17 MR. MENSCH: A Can you define what you mean as
18 problems?

19 Q Well, you believe that the existing Department of
20 Fish and Game/PG&E agreements associated with 184 are
21 inadequate to protect fish populations?

22 A There's a whole series of fish populations involved.
23 I might provide an answer that it is significantly less
24 than optimum conditions and we would seek to have those
25 conditions improved.

26 Q And where will you seek to have those conditions
27 improved?

28 A At any legal forum or opportunity.

29 Q Does that include before the Federal Energy
30 Regulatory Commission?

31 A Very definitely.

32 Q Now, assuming that the current El Dorado project --
33 MS. PETER: The current project before us here
34 today?

35 MR. SOMACH: A The one that is attempting to be
36 permitted here today, does not vary at all the operation of
37 the upstream lakes, in your view, what impact does it have
38 then on fish and wildlife resources?

39 A I believe that was covered in my testimony.

40 Q And the answer to that question --

41 A Do you want me to read the sections?

42 Q I read your testimony, but I am not sure I
43 understood from that testimony exactly what incremental
44 difference with respect to the lakes that the current

1 attempted to be permitted project will have over existing
2 operations.

3 A I think, as I testified yesterday, any management
4 plan for fish and wildlife on the El Dorado project, either
5 the El Dorado project as licensed by FERC to PG&E, or the
6 water rights applications for the El Dorado project
7 considered here, need to be looked at in a comprehensive
8 manner starting at the upper lakes, determine minimum lake
9 levels, minimum pools, operating regimes for drawdown of
10 those reservoirs, instream flows, along with temperature
11 evaluations and considerations of screening and protective
12 measures at the El Dorado Canal and at Alder Creek and
13 consideration of fish protective measures involved with
14 both the Slab Creek SMUD operation and all the way down to
15 Folsom, considering what impacts any actions may have on
16 changing particularly the cold water pool in Folsom
17 Reservoir, or any downstream flow or temperature changes.

18 Q Okay. Let's then separate out for a moment, if we
19 could, the cold water pool at Folsom and downstream. Let's
20 merely look upstream for the point of this question, and
21 that is again, assuming the project is as it has been
22 described, merely relying upon the existing operations of
23 PG&E, what is the incremental difference from a fish and
24 wildlife perspective of the existing operations of the PG&E
25 facilities and the operations of this project?

26 A Well, I don't quite understand your question because
27 PG&E's operations don't change Folsom. The El Dorado
28 project, as we have considered it, will and I am basing
29 that on the EIR and the testimony I have heard from other
30 witnesses.

31 Q My questions said, let's look upstream from Folsom.
32 We will talk about Folsom in a moment. Look upstream from
33 Folsom, and if you could, please just indicate what the
34 incremental differences from a fish and wildlife resources
35 perspective there are between the operation of the project
36 that is before us in this hearing and the existing PG&E
37 facilities?

38 A You hit at the very point of our testimony. There
39 is not sufficient information to make those kinds of
40 decisions and the Board has no information before it, nor
41 can we present any, nor have I seen any presented by any
42 other agency which will allow such an identified decision
43 relating to fish and wildlife.

44 Q Mr. Mensch, if the operation of the El Dorado
45 project that is before us is no different than the

1 operation of PG&E's facilities upstream, how could there be
2 an incremental difference between one and the other?

3 A If there was no difference, there would not be.
4 There is a difference, I believe, as testified by your
5 witnesses, specifically the example of the operation of
6 Slab Creek.

7 Q Okay, then let's move upstream and let's talk about
8 the lakes.

9 MS. PETER: The upper watershed lakes?

10 MR. SOMACH: That's correct.

11 Q What is the incremental difference there?

12 A The specific incremental difference is not
13 identified or not identifiable. There may, in fact, be
14 none. However, that still begs off on the question that we
15 are trying to identify that the Board has requested, what
16 are the appropriate minimum pools.

17 Q I just want to make sure I understand. You say that
18 there is no difference between this project and the
19 existing operation of those PG&E facilities, at least with
20 respect to fish and wildlife resources; is that correct?

21 A The information presented at this time would not
22 allow me to make a determination if there was any
23 difference. I would have to say based upon existing
24 information, I don't know of any difference.

25 Q Okay. Now, with respect to Slab Creek and the
26 operation of Slab Creek Reservoir, you understand how that
27 reservoir is operated currently by SMUD?

28 A Yes, we have been working with SMUD on some recent
29 past problems and have looked at that. Fluctuation of Slab
30 Creek Reservoir has resulted in some severe siltation
31 problems. Any changes in operation of Slab Creek in the
32 absence of a licensed amendment would cause me to prepare a
33 complaint to go to FERC for violation of Article 57 of that
34 license.

35 Q Well now, let me ask you this. You are aware of the
36 degree of fluctuation in Slab Creek?

37 A I am aware that Slab Creek fluctuates now.

38 Q What happens if the fluctuation that is being
39 proposed by El Dorado in this process falls within the
40 ambit or the envelope, or within the parameters of the
41 existing SMUD fluctuations?

42 A I am unable to speculate on that particularly in
43 light of the evidence being presented at this hearing that
44 it is not in that case, so I would speculate on something I
45 have no background information on.

1 Q Well, is it your understanding that the fluctuation
2 at Slab Creek is less than one-half to one foot?

3 A No.

4 Q So that one-half to one foot would be within the
5 existing fluctuation at Slab Creek; isn't that correct?

6 A No, that is not my understanding.

7 Q What is not your understanding?

8 A That the existing fluctuation would be within the
9 level -- I believe the testimony that I understood was that
10 it would increase the fluctuation by this amount, by a
11 diversion of additional water.

12 Q Okay. If, in fact, the fluctuation was within this
13 one to one-half foot fluctuation band and that it was not
14 in addition to but merely fell within the existing SMUD
15 operational fluctuations, would that give you concern?

16 A What is the duration? What are the changes that are
17 occurring? I would have to have a whole new set of
18 parameters to evaluate. Otherwise, I think it would be
19 idle speculation.

20 Q Let's turn to the question of a cold water pool in
21 Folsom Reservoir. There is written testimony that talks
22 about the fact, and I think there was some modification of
23 it yesterday, that the diversions by El Dorado would be,
24 and I know what was in the written testimony was ten
25 percent of the pool.

26 Do you recall that?

27 A Yes. Roughly the Folsom Reservoir has gotten down
28 to, I believe in the neighborhood of 200,000 acre-feet.
29 The reduction of 17,000 within this project would result in
30 approximately 8 percent, I believe.

31 Q And what are those calculations based upon? Was
32 that just simply taking the annual diversion of 17,000,
33 which, of course, is the maximum diversion, and just taking
34 that diversion rate and then comparing it on an average
35 basis with the lowest minimum pool at the end of the year?

36 A The effects, in my opinion, in my analysis, the
37 effects recur relating to the minimum cold water pool and
38 that was the analysis I made.

39 Q So, regardless of what happened during the year in
40 terms of the amount of water, the timing of diversion in
41 terms of this 17,000 acre-feet, you have merely compared
42 this to the end pool without regard to exactly when the
43 diversions were taking place and what other water was
44 available after those diversions?

1 A If it decreases the cold water pool, the total cold
2 water pool available, it will adversely affect the
3 downstream fisheries.

4 Q Well, you said that twice and I am just asking you
5 when you made your estimation that's in your testimony, did
6 you account for the annual diversion of 17,000 and account
7 for other inflow during the year as well as releases from
8 Folsom Reservoir? What was the sophistication, what was
9 the degree of analysis that went into the conclusion in
10 your statement?

11 A It was based on the information I had available in
12 the EIR, and from my experience working with the Bureau of
13 Reclamation on the reauthorization and reoperation of
14 Folsom, it looked at what I believe could be the worst
15 scenario, that the minimum cold water pool could be reduced
16 by up to that amount.

17 Now, I don't know the specific and I don't know that
18 it has been identified in the EIR here, the exact timing.
19 As late as yesterday the operations aren't even completely
20 finalized as to when and exactly how and the amount of
21 diversion that would occur, so it is impossible for me to
22 make a more detailed analysis of the information that was
23 available, which was a pretty general analysis.

24 Q What adverse impacts to plant species are associated
25 with the diversions themselves?

26 A I don't believe that we identified any specific
27 direct plant impacts with the diversion. I believe the
28 impacts were identified in the area of use, and also, on
29 the direct pipeline routing or utility routing for the
30 White Rock project.

31 Q And is the same the case with respect to wildlife?

32 A No.

33 Q What wildlife impacts did you identify associated
34 specifically with the water diversion project?

35 A Continued diversions will continue to kill deer and
36 other animals in the canal.

37 Q That's in the El Dorado Canal?

38 A Correct.

39 Q And again, have you determined the incremental
40 difference in terms of impact from existing operations of
41 that canal by PG&E to the operation or utilization of that
42 canal by the Irrigation District for water supply?

43 A No, that wasn't part of our analysis.

1 Q So, what you are talking about then when you talk
2 about the problems with the canal, that's an existing
3 problem; is that correct?

4 A The canal is killing wildlife at this time. The
5 water that you are proposing to divert is part of that same
6 water that is killing animals.

7 Q So the existing water flowing through the canal is
8 killing animals, and is there some incremental difference,
9 is all I am trying to find out?

10 A No, in the absence of additional protective
11 measures, it will probably continue to kill the same
12 amount.

13 MR. SOMACH: I have no further questions.

14 MR. STUBCHAER: Okay. Does staff have additional
15 questions?

16 All right, Ms. Peter, do you have any redirect?

17 MS. PETER: Just one question.

18 REDIRECT EXAMINATION

19 by MS. PETER:

20 Q Mr. Mensch, in response to questions by Mr. Jackson
21 yesterday, you discussed FERC's amendments and licenses on
22 other projects. Can you just summarize your recent
23 experience with respect to the Department of Fish and
24 Game's effort to have additional biological studies
25 conducted and increased streamflows in these new licensing
26 proceedings?

27 MR. MENSCH: A In essentially every case evalua-
28 tions have been completed. In many cases detailed studies
29 on the North Fork Feather, six years of study data were
30 collected by the Department and by PG&E, and the Department
31 collected it under contract.

32 A number of projects, I think the Narrows project on
33 the Yuba River, the Rock Creek crest project on the North
34 Fork Feather, the Mokelumne project on the upper Mokelumne
35 of PG&E, the East Bay MUD project on the lower Mokelumne,
36 SMUD's project on the South Fork American, every one of
37 these through either license amendment or relicensing has
38 resulted in significant changes and in many cases orders of
39 magnitude increases of flows, and the El Dorado project.

40 MS. PETER: I have no further questions.

41 MR. STUBCHAER: Any recross on this redirect?

42 MR. SOMACH: I would just like to ask one question.

43 RECROSS-EXAMINATION

44 by MR. SOMACH:

1 Q Mr. Mensch, do you understand El Dorado to be
2 indicating in any way that if the flows were modified
3 because of increased FERC regulation, as you have
4 postulated in response to the last question, that El Dorado
5 still would not want to divert whatever flows were allowed
6 to be let down from those facilities?

7 MR. MENSCH: A No.

8 MR. SOMACH: Thank you.

9 MR. STUBCHAER: All right.

10 MS. PETER: I would like to move Fish and Game
11 Exhibits 1 through 3, which includes 10-A, into evidence.

12 MR. STUBCHAER: Does staff agree with the numbers?

13 MS. KATZ: Yes.

14 MR. STUBCHAER: Any objection to receiving these
15 exhibits into evidence? They are accepted.

16 The panel is excused.

17 MS. PETER: Thank you very much.

18 MR. STUBCHAER: We will now go to the testimony of
19 the U. S. Fish and Wildlife Service. Ms. Niebauer, you
20 have been allocated 40 minutes for your direct.

21 MS. NIEBAUER: I don't think it will take that long.
22 I am Erica Niebauer, representing the U. S. Fish and
23 Wildlife Service.

24 The Service has three witnesses this morning and I
25 would just like to proceed with those witnesses. Our first
26 witness is Mr. Peter Lickwar.

27 PETER LICKWAR,

28 having been sworn, testified as follows:

29 DIRECT EXAMINATION

30 by MS. NIEBAUER:

31 Q Would you please state your name and spell your last
32 name for the record.

33 A My name is Peter Lickwar, L-i-c-k-w-a-r.

34 Q And would you state your employer and your present
35 occupation or present position?

36 A I am employed by the U. S. Fish and Wildlife Service
37 as a fish and wildlife biologist.

38 Q And is U. S. Fish and Wildlife Service Exhibit 1 an
39 accurate description of your qualifications?

40 A Yes, it is.

41 Q Did you prepare U. S. Fish and Wildlife Service
42 Exhibit 4, which is entitled, *Testimony of Peter Lickwar*?

43 A Yes, I did.

44 Q Is this exhibit your written testimony for these
45 proceedings?

1 A Correct.

2 Q Is that written testimony true and correct to the
3 best of your knowledge?

4 A Yes, it is.

5 Q Would you briefly summarize that testimony?

6 A The El Dorado project has many potential direct and
7 indirect impacts to fish and wildlife resources in the
8 South Fork of the American, lower American and Sacramento
9 River drainages.

10 Direct impacts that will reduce streamflow could
11 include reduction in fish habitat, fish productivity and
12 degradation of water quality.

13 Additional possible indirect impacts from develop-
14 ment supported by the project include erosion,
15 sedimentation in streams, loss of terrestrial vegetation,
16 reduction of wildlife habitat and direct mortality to fish
17 and other aquatic resources.

18 The sponsors' environmental analysis concluded that
19 most impacts could be reduced to acceptable levels through
20 mitigation. The Service disagrees with this conclusion.

21 We have reviewed the information available regarding
22 project impacts and mitigation, and have to the extent
23 possible evaluated them. However, specific information is
24 needed regarding project impacts, the mitigation measures
25 to be used, and how they will be implemented, as well as
26 how their effectiveness will be determined, before we can
27 judge their value.

28 The proposed environmental monitoring program is
29 also inadequate and will not supply the information needed
30 to document project effects on fish and wildlife resources
31 and the success or failure of the proposed mitigation
32 measures.

33 Finally, there is not enough information on existing
34 environmental conditions such as water quality, fish
35 populations, vegetation and wildlife habitat to support
36 probation report project impact analysis. We believe that
37 it is the project sponsors' responsibility to generate this
38 information.

39 We hope that the Board will concur with our opinion
40 and if a water rights order is issued, you will address
41 these problems by attaching appropriate terms and
42 conditions.

43 This concludes my direct testimony.

44 MS. NIEBAUER: Thank you.

45 Our next witness is Mr. Richard Morat.

1 RICHARD MORAT,
2 having been sworn, testified as follows:
3 DIRECT EXAMINATION

4 by MS. NIEBAUER:

5 Q Mr. Morat, would you please state your name, your
6 employer and your present position.

7 A My name is Richard Morat, M-o-r-a-t. I am with the
8 U. S. Fish and Wildlife Service, and I am a fish and
9 wildlife biologist.

10 Q Is U. S. Fish and Wildlife Service Exhibit 2 an
11 accurate description of your qualifications?

12 A Yes.

13 Q Did you prepared U. S. Fish and Wildlife Service
14 Exhibit 5 and 5-A entitled, *Testimony of Richard Morat*, and
15 *Additional Testimony of Richard Morat*?

16 A Yes.

17 Q Are those exhibits your written testimony for these
18 proceedings?

19 A Yes.

20 Q Is that written testimony true and correct to the
21 best of your knowledge?

22 A Yes.

23 Q Would you please briefly summarize that testimony?

24 A In Exhibit 5 I state that the Service's position is
25 that instream flows are oftentimes highly deficient with
26 respect to the needs of estuarine fish and wildlife
27 resources and the protection and restoration of essential
28 water resources must be made in advance of any decision to
29 grant more water rights for out-of-stream uses.

30 I make note that the El Dorado project at the 2020
31 level of demand makes consumptive use on average of 17,000
32 acre-feet of American River water that heretofore has been
33 contributing to Delta inflow and outflow.

34 The project should, as best as possible, quantify
35 impacts and provide compensation commensurate to the
36 impacts.

37 The American River is a large and important
38 contributor to Delta fishery resources. A large share of
39 the Central Valley salmon and American shad originate in
40 the lower American River.

41 Springtime water temperatures in the lower
42 Sacramento River and upper estuary are at times marginal,
43 contributing to the survival of some anadromous species,
44 especially salmon smolts.

1 The American River at times favorably improves water
2 temperatures in the lower Sacramento River and upper
3 estuary for migrating salmonids.

4 In Exhibit 5-A, I explain the difficulty but not
5 impossibility of quantifying Delta impacts from the El
6 Dorado project. I very briefly explain the sensitivity and
7 limits of the Service's Sacramento smolt salmon model and
8 the Department of Fish and Game's striped bass model.

9 I note that the Delta export operations adversely
10 affect many fish and I mention that the CVP mitigates some
11 of the direct impacts of those export operations.

12 I stress that the winter period is important for
13 successful outmigration of smolts, winter-run salmon and
14 the protection of Delta smelt.

15 Significant numbers of these species have been taken
16 in the past by Delta export operations and the effect of
17 those operations is affected by changes in Delta inflow.

18 I explain that Delta impacts to fish are a very
19 difficult problem that is presently being addressed
20 primarily through the Endangered Species Act consultation
21 on the winter-run chinook salmon and Delta smelt.

22 Decision 1485 affords very poor protection for
23 anadromous and estuarine fish under most water conditions.

24 I have a desirability for the more protective water
25 quality control plan and offer, in concept at least, an
26 alternative for the El Dorado project to compensate Delta
27 impacts, largely following the ecological fair share
28 principle requiring water for Delta inflow and outflow
29 during water-short periods in exchange for diversions
30 during surplus periods.

31 I explain that exacerbation of Delta fish habitat
32 conditions such as by the El Dorado project, will at the
33 present time result in additional difficulty in water cost
34 to the Central Valley Project and the State Water Project
35 as supplied with the Endangered Species Act consultations.

36 That concludes my summary of Exhibits 5 and 5-A.

37 MS. NIEBAUER: Thank you.

38 Our third and final witness is Mr. Bob Pine.

39 ROBERT PINE,

40 having been sworn, testified as follows:

41 DIRECT EXAMINATION

42 by MS. NIEBAUER:

43 Q Would you please state your name, your employer and
44 your present position.

1 A My name is Robert Pine, P-i-n-e. I am with the U.
2 S. Fish and Wildlife Service and I am fish and wildlife
3 biologist.

4 Q Is U. S. Fish and Wildlife Service Exhibit 3 an
5 accurate description of your qualifications?

6 A Yes, it is.

7 Q Did you prepare U. S. Fish and Wildlife Service
8 Exhibit 6, which is entitled, *Testimony of Robert Pine*?

9 A Yes, I did.

10 Q Is that exhibit your written testimony for these
11 proceedings?

12 A Yes, it is.

13 Q And is that written testimony true and correct to
14 the best of your knowledge?

15 A Yes, it is.

16 Q Would you briefly summarize that testimony?

17 A I am testifying on the federally-listed threatened
18 species, the Delta smelt and the petition species, the
19 Sacramento splittail, which is a federal candidate species,
20 and the longfin smelt. And these species are important to
21 this proceeding because they represent the declining
22 condition of aquatic habitat in the Sacramento-San Joaquin
23 Delta.

24 With the Delta smelt, the Federal Register rule
25 which was published on March 5, identified that the species
26 is threatened and has declined nearly 90 percent over the
27 last 20 years. It has been identified that the decline of
28 freshwater outflows during the Delta smelt rearing interval
29 of February through July has matched the decline of the
30 Delta smelt over the past 20 years.

31 The Delta smelt has a one-year life history and
32 changes in the rearing habitat and other aspects of the
33 habitat can rapidly lead to declining populations and
34 extinction.

35 Decreases in inflow to the Sacramento-San Joaquin
36 Delta during the critical rearing period result in
37 decreased outflow that shifts the position of the mixing
38 zone upstream to less suitable habitat which causes
39 unfavorable salinity regimes and geographic dispersion,
40 high levels of contaminants, and higher losses to
41 agricultural and municipal diversions.

42 The decrease to Delta inflow and the resulting
43 decrease to Delta outflow due to El Dorado County's use of
44 up to 22,625 acre-feet of American River water from Pacific
45 Gas and Electric, Folsom Reservoir and other water rights

1 of the placement of the rearing area and in terms of, you
2 know, other things that are important with Delta smelt or
3 with other species that are either petitioned or are
4 currently listed.

5 Q So, if that were the only diversion from the system,
6 no other diversions, no operation of Federal and State
7 pumps, you contend that the diversion of this amount of
8 water would be deleterious to Delta smelt, winter run,
9 whatever species are of concern to you?

10 A We feel that it would have an effect. In and by
11 itself, it would be difficult to determine whether it would
12 be a substantial negative effect or that it would involve
13 take.

14 Q Is there a threshold that the Fish and Wildlife
15 Service believes where there will be no deleterious effect?
16 Let's say one acre-foot of water, 100 acre-feet of water,
17 whatever. Is there a threshold or is it simply any
18 diversion of water will have the same kind of testimony
19 that you have provided here today?

20 A The way that we have been treating most of the
21 projects thus far that we have been doing some type of
22 informal consultation or formal consultation with, is to
23 say that you can't look at the effects as isolated effects,
24 that you have to look at it as a cumulative effect with all
25 the other projects considered.

26 Q So, there is no threshold. It is any and all
27 diversions are considered to have a potential deleterious
28 effect; is that correct?

29 A A potential deleterious effect.

30 Q So, as a consequence, no matter what projects were
31 to come before the Board, even assuming a one-acre project
32 would come before the Board, you would, in essence, give
33 the same type of testimony you have given today with
34 respect to the potential impacts to the Delta species that
35 you have talked about; isn't that correct?

36 MR. MORAT: A That is a tough question. It really
37 depends where and what resources are involved. In the case
38 of endangered species, there is perhaps a certain
39 definition of what is significant. For other estuarine
40 fish that are not or may never be listed, there might be a
41 different threshold.

42 Our resources permit us to only get involved in a
43 few activities and there are numerous activities each year
44 of a much larger scale than a second-foot that we just
45 can't address because of time.

1 Q Time and money constraints -- I mean in terms of the
2 theory that you postulate here, the testimony that you give
3 here, if I understood it, and that's all I am trying to do
4 is clarify, there is no difference in what you have to deal
5 with in terms of money and time which creates some
6 constraints, but in terms of the science, the scientific
7 concerns that you bring to the table, is there any
8 difference in your mind in terms of the deleterious effect
9 of diversions, a threshold type of difference?

10 A There is a difference in magnitude, but the facts
11 before us today and the issue before us today is the 17,000
12 to 20,000 acre-feet of the El Dorado project, which Mr.
13 Pine has stated is significant to Delta smelt and/or other
14 species not listed.

15 We believe it is at least significant and
16 measurable.

17 Q With respect to some of these other species, is it
18 the Fish and Wildlife Service's habit to take petitions
19 like the one that was submitted by the Natural Heritage,
20 whatever it is, Institute, and repeat what is in those as
21 Fish and Wildlife Service's policy?

22 A Which petition are you talking about?

23 Q The one that was being testified to by the Natural
24 Heritage Institute, which I believe is Exhibit No. 9.

25 MR. PINE: A I don't think that the Service
26 necessarily has a policy in terms of this, but it was our
27 feeling that with this particular petition, it represented
28 aspects of the Service's view on the Delta that we could
29 support.

30 Q So, the Fish and Wildlife Service has adopted the
31 views of the Natural Heritage Institute with respect to the
32 petition that you have submitted as Exhibit No. 9?

33 A Okay. We feel that it's relevant information for
34 these proceedings. Since the determination has not been
35 found yet in terms of whether they will be listed or not, I
36 think that we have already pretty much covered, you know,
37 within our written and oral testimony, our feelings for the
38 Delta as a whole and the relevance of this particular
39 petition to the Delta as a whole.

40 Q My question is whether or not the Fish and Wildlife
41 Service made a determination that the petition is, in fact,
42 accurate scientifically and factually, and will be acted
43 upon and adopted by the Fish and Wildlife Service
44 accordingly?

1 MS. NIEBAUER: I am going to object to that. The
2 Fish and Wildlife Service has yet to make a finding on that
3 particular petition. That finding is due. However, it has
4 not been made. This witness is not qualified to talk to
5 the finding.

6 MR. STUBCHAER: Can you explain why you offered it
7 as evidence then?

8 MS. NIEBAUER: I think he just did. He indicated he
9 offered it as tending to have some information in it which
10 would support the overall view of the Delta itself. That
11 is not to say, however, the Fish and Wildlife Service will
12 positively or negatively make a finding on those particular
13 species.

14 MR. STUBCHAER: I think you can answer the ques-
15 tion. Will you repeat the question or do you want it read
16 back?

17 MR. SOMACH: That would be helpful.

18 (The reporter read the question: *My question is*
19 *whether or not the Fish and Wildlife Service ever made a*
20 *determination that the petition is, in fact, accurate*
21 *scientifically and factually, and will be acted upon and*
22 *adopted by the Fish and Wildlife Service accordingly.*)

23 MR. STUBCHAER: You can answer that yes or no.

24 MR. PINE: A All right. I am going to restate some
25 of this because under the Endangered Species Act we are not
26 allowed to prejudge a determination on a petition.

27 MR. STUBCHAER: Do you want to take it in three
28 parts and answer yes or no to each part?

29 A That might be helpful.

30 MR. STUBCHAER: Do you want to read the first part,
31 Alice?

32 (The reporter repeated the question.)

33 MR. VOLKER: Mr. Stubchaer, may I be heard?

34 MR. STUBCHAER: On this issue?

35 MR. VOLKER: Yes. I have perceived there is a
36 hurdle that we have to get over and I have a comment with
37 regard to a point of order.

38 MR. SOMACH: I would like to suggest this question
39 wasn't all that difficult, I didn't think. I don't
40 understand why anyone --

41 MR. STUBCHAER: I would like to see the question
42 answered first before I hear your point of order.

43 MR. PINE: A I guess the slowness in the response
44 is due to the fact this does have something to do with
45 regulations within the Endangered Species Act which do not

1 allow a predetermination or predecisional judgment or
2 decision making, so we don't want to --

3 MR. STUBCHAER: So then, the answer is no, you
4 haven't made a decision.

5 A The Service has not made a decision, that's correct.

6 MR. STUBCHAER: All right. The second part of the
7 question.

8 (The reporter reread the question.)

9 MR. SOMACH: Q So you haven't decided whether or
10 not you're going to adopt the petition?

11 A That's correct.

12 MR. STUBCHAER: Mr. Volker, do you still have a
13 point of order?

14 MR. VOLKER: I would like to be heard on the
15 following narrow point of order. That is, it is my
16 understanding the witnesses are testifying with respect to
17 their expertise as scientists and their professional
18 judgments on scientific studies done by others, something
19 within their professional competence.

20 There is a separate issue on whether or not the U.
21 S. Fish and Wildlife Service as a federal agency, has yet
22 taken formal adjudicatory action in response to a petition.

23 So that's two different areas and I thought the
24 question overlapped, at least in the witness's mind,
25 overlapped between the two, leading to some difficulty.

26 MR. SOMACH: On the other hand, it was my
27 understanding they were testifying on behalf of the Fish
28 and Wildlife Service and not in their individual
29 capacities. If I am in error there and you are all here in
30 your individual capacities, I would certainly like to know
31 that now.

32 MS. NIEBAUER: I think we have past the point.

33 MR. SOMACH: I didn't ask this last question.

34 MR. STUBCHAER: You are asking if the witnesses are
35 here for the Fish and Wildlife Service?

36 MR. SOMACH: No, I'm not asking that question. I am
37 responding to whatever Mr. Volker's point of order was,
38 which eludes me, I guess.

39 Q When you considered cumulative impacts, did you at
40 all consider the question of the effect that Folsom
41 Reservoir would have in terms of regulation of flow down
42 the lower American River in the Delta?

43 MR. MORAT: A Yes, I did, the general impacts on
44 fish and wildlife, there's a lot of unknowns. We don't

1 have an operation, how the Bureau may reoperate in response
2 to El Dorado's project if it were implemented and operated.

3 Typically the Bureau places a lot of emphasis on
4 their operation on delivering water, so sometimes they find
5 themselves at the end of the year at certain water
6 conditions because they had a large objective, not to total
7 one perhaps, to deliver X amount of acre-feet of water.

8 In the case of the El Dorado project delivering
9 21,000 acre-foot, then the Bureau has some operational
10 options to decide whether or not they wish to pass that
11 through and simply end the year at 21,000 acre-feet less
12 storage, or reduce deliveries. There's a variety of ways
13 they can operate in response to that change in hydrology
14 coming into Folsom Reservoir, and I was looking at some of
15 those cumulative impacts and in my testimony, I believe,
16 that some of these impacts may be in the winter, January,
17 February, and March, and it may be because of operational
18 scenarios where reclamation, say, builds up some of the
19 depletions in water in Folsom Reservoir, and say, at the
20 end of a five-year period of 20,000 acre-feet a year of
21 depletions upstream, which in years when Folsom does not
22 fill, there is one scenario where Folsom Reservoir could be
23 at the end of a five-year period 105,000 acre-feet lower
24 than it would be in the absence of the El Dorado project.

25 Therefore, the impact of that operation on the Delta
26 might be of much greater magnitude, but of much shorter
27 duration than one might assume if it is like 20 to 30
28 thousand acre-feet day in and day out.

29 So, we did look at it and we don't have the data.

30 Q In that consideration, did you assume at all that
31 the Bureau was operating on a priority basis to meet the
32 Delta and lower American River obligations?

33 A Yes.

34 Q And did you determine that the impact of the El
35 Dorado project would be such that they could not operate on
36 a priority basis, and the assumption is that their first
37 order of priority, the thing that they had to accomplish
38 was to meet lower American River and Delta obligations, and
39 that their contractual obligations were secondary, and they
40 had to take that water for those purposes from whatever
41 supply they had after they met the lower American River and
42 Delta obligations.

43 Did you construct in your analysis that you just
44 talked about a scenario where the 21,000 acre-feet would

1 create a situation where they could not meet their Delta or
2 lower American River obligations?

3 A I did not assume that would be the case. However,
4 meeting a standard doesn't equate to known environmental
5 impacts, and sometimes that impact could be quite
6 significant, yet the standards could still be met, vis-a-
7 vis 1485. The fisheries in 1485, significantly so. Those
8 institutional targets, while I am sure they would be met,
9 are sure no removal of impacts.

10 Q So now, you are drawing a distinction between the
11 question of impact and meeting your legal obligations for
12 flow, your legal requirements in terms of standards
13 established by regulatory agencies for the lower American
14 River and the Delta; is that correct?

15 A I don't understand that question.

16 Q Well, you seem to separate out the question of
17 standards which are imposed by regulatory agencies for
18 certain purposes and impacts, and you are dealing with them
19 as two separate things; is that correct?

20 A No, I am just addressing them. Again, we haven't
21 got that information. We would need, as I believe Exhibit
22 5-A states in very brief order that we need operational
23 studies for a long period of record to describe how the
24 impacts of this El Dorado project would be felt throughout
25 the system, and to at least the western Delta, if not
26 further.

27 MR. SOMACH: I have no further questions.

28 MR. STUBCHAER: Mr. Moss?

29 CROSS-EXAMINATION

30 by MR. MOSS:

31 Q I have one question for Mr. Pine.

32 Are you aware of any study ongoing perhaps on
33 predation of Delta smelt by silversides?

34 MR. PINE: A No, I am unaware of predation by
35 silversides.

36 Q Any of the other witnesses aware of that?

37 MR. MORAT: No.

38 MR. MOSS: Thank you.

39 MR. STUBCHAER: Mr. Jackson.

40 CROSS-EXAMINATION

41 by MR. JACKSON:

42 Q Calling your attention to the question of whether or
43 not there are impacts in the Delta, you indicated that
44 there was a distinction between the standards and the
45 impacts. Is the distinction that D-1485, which is the

1 present standard in the Delta by the Board, is inadequate
2 to take care of the Delta fisheries in and of itself?

3 MR. MORAT: A My testimony states that very
4 explicitly it provides poor protection under most water
5 conditions for fish and wildlife.

6 Q In other words, the impacts are distinct from the
7 standards? The standard may decide they will allow a lot
8 of impact --

9 A If the standard were for zero water, then there is
10 quite a distinction. That standard would not protect any
11 aquatic resources.

12 Q Now, is it also important that if you are talking
13 about a particular standard, that the standard be enforced?
14 I mean, if the standard isn't enforced, then it doesn't
15 protect anything.

16 A You get the benefit of what is in the environment,
17 not what is on the paper.

18 Q Are you aware that the Bureau and the Department of
19 Water Resources have violated the standards with impunity
20 for the last two years?

21 MR. SOMACH: Objection, relevance.

22 MR. STUBCHAER: Sustained.

23 MR. JACKSON: On the ground of relevance?

24 MR. STUBCHAER: Yes.

25 MR. JACKSON: May I be heard?

26 MR. STUBCHAER: Sure.

27 MR. JACKSON: The relevance is, as you know, Mr.
28 Chairman, the State Board has never enforced D-1485 against
29 the State and Federal Governments, and that, in fact, there
30 has been a hearing here before the State Board in which the
31 State Board has forgiven the violations in 1991 and 1992
32 when the Delta was in critical condition.

33 What I am trying to point out is that the argument
34 that the standards somehow result in no impacts is untrue
35 because they are not enforced by the regulators. I believe
36 that's entirely relevant to Mr. Somach's line of
37 questioning.

38 MR. STUBCHAER: All right, you may proceed.

39 Ask the question again.

40 MR. JACKSON: Same question.

41 A I will make it quick. I don't know about impunity,
42 but I did participate in the hearing last November when the
43 subject of violations by the two water projects was
44 discussed, and I read the paper a few days ago.

1 MR. JACKSON: Q Indicating that those violations
2 had been essentially just dropped by the Board?

3 A I think the gist of the newspaper article was there
4 was going to be no action taken on those.

5 Q Now, in this regard, when you are dealing with an
6 outdated standard in terms of impacts on the fish, in a
7 situation in which the government does not enforce the law
8 anyway, is there potential incremental increase when you
9 take the water available both to meet the standards and to
10 take care of the environment in the nature of 21,000 acre-
11 feet?

12 A In that situation, it exacerbates it and results in
13 even less protection. It's the baseline against which the
14 fish exist in the Delta. If the baseline is smaller
15 because of an action, in most cases that results in less
16 habitat.

17 Q Is there a time period that is more crucial than
18 others in terms of water availability from Folsom
19 Reservoir?

20 A You must deal with specific species, but in general,
21 springtime is a very important period.

22 Q Is it also important in terms of summer and fall
23 cold water storage, that there be available water to take
24 care of the area between Folsom Reservoir and the Delta?

25 A Adequate carryover storage is critical for having
26 water temperatures suitable for anadromous fish in the
27 lower American River. Also, they in large part dictate
28 springtime operations, so larger carryover storage in the
29 fall frequently means a better wintertime operation for
30 fish and better springtime operation for fish.

31 Q Has the Fish and Wildlife Service notified anyone of
32 the beginning of a consultation in regard to this
33 particular project and its effect on endangered and
34 threatened species?

35 MR. PINE: A We didn't notify people in terms of
36 consultation. In general, consultation is requested of us.

37 Q Has there been a request for this project?

38 A If there is not a federal agency nexus, then there
39 wouldn't be a request for a consultation. What would
40 happen is that there would be a request for a Section 10,
41 which is essentially a request for some type of incidental
42 take provision.

43 Q Has such a request been made?

44 A The only thing I can say is not to my knowledge.

1 Q Now, if you have a federal agency affected, in this
2 case the Bureau is going to have 21,000 acre-feet of water
3 less in order to deal with its responsibilities in the
4 Delta, does the Bureau then make that request of you?

5 A I think I would state that I don't know the answer
6 to that.

7 MR. JACKSON: Thank you, no further questions.

8 MR. STUBCHAER: Anyone else wish to cross-examine
9 Fish and Game?

10 CROSS-EXAMINATION

11 by MS. PETER:

12 A Just a few quick questions.

13 Mr. Morat, in your testimony you said the greatest
14 impact to the Delta fisheries may be during the January,
15 February and March period, and then, in response to Mr.
16 Somach's cross-examination, you gave one scenario. Is that
17 the basis of your opinion, or do you have an additional
18 basis?

19 MR. MORAT: A I believe it was Mr. Jackson's cross.
20 I described that one scenario. There are many others. I
21 believe that accurately explains why I believe the greatest
22 impacts from the El Dorado project in the Delta may well be
23 in the winter period.

24 Q Mr. Lickwar, in your opinion, is there sufficient
25 information available to determine appropriate streamflows
26 temperature regimes and other protective measures in the
27 Silver Fork and the South Fork of the American River?

28 MR. LICKWAR: A There are not.

29 Q And also, with respect to plants, if you can address
30 this issue, is there a proposal being prepared by the U. S.
31 Fish and Wildlife Service to federally list five rare plant
32 species in the western El Dorado District service area?

33 A I should specify this is not an area of expertise
34 for me. However, I have been in discussions with other
35 Fish and Wildlife Service staff regarding issues which
36 could be related to the El Dorado project, and those staff
37 have told me that there is such a list package being
38 prepared.

39 Q And from your discussions with these individuals, if
40 you can answer this question, would the growth-inducing
41 impacts of the El Dorado project in the western service
42 area affect the Service's analysis of whether or not to
43 list these plant species?

1 MR. SOMACH: Objection. The witness has already
2 indicated he has nothing but hearsay knowledge of what is
3 going on.

4 MS. PETER: As you know, hearsay is acceptable. I
5 am just asking -- if he doesn't know, he can say he doesn't
6 know.

7 MR. STUBCHAER: If you can answer, go ahead.

8 A No, I cannot answer the question.

9 MS. PETER: I have no other questions.

10 MR. STUBCHAER: Do you have any redirect?

11 MS. NIEBAUER: No, I do not.

12 MR. STUBCHAER: Staff, I overlooked you again.

13 EXAMINATION

14 by MR. FALKENSTEIN:

15 Q I have one question. I will direct this at the
16 panel.

17 What do you feel is significant relative to percent
18 or amount as an impact to the Delta? What do you feel is a
19 significant amount? Can you define that?

20 MR. PINE: A If you are dealing with endangered
21 species, you could say that if one organism is taken that
22 that brings into play the Endangered Species Act. That's
23 the definition of that.

24 Q On other species, what might that be, on non-listed
25 species?

26 MR. MORAT: A I don't have a good answer for that.
27 If you could guarantee us a 1992-1993 water year every
28 year, then something on the order of this project may
29 approach something we may not even come to a hearing of
30 this nature on, but in the absence of that and with the
31 standards that we have, we believe it is significant. I
32 don't have a discrete number here.

33 MR. FALKENSTEIN: Thank you.

34 MR. STUBCHAER: Anything else?

35 MS. NIEBAUER: I have no redirect.

36 MR. CREGER: Mr. Chairman, I didn't get asked.

37 MR. STUBCHAER: Did you raise your hand when I
38 asked?

39 MR. CREGER: Yes.

40 MR. STUBCHAER: Well, come on up.

41 CROSS-EXAMINATION

42 by MR. CREGER:

43 Q Does the U. S. Fish and Wildlife Service have
44 responsibility or does their responsibility or does their
45 responsibility extend to the areas served by the Central

1 Valley Project that we call downstream of the Delta, the
2 southern area of the state?

3 MR. MORAT: A Yes, we have responsibility. We have
4 offices, three in California, and we have certain
5 authorities nationwide.

6 Q Not being an expert in this field, my next question
7 is then, will the El Dorado project affect any portions of
8 the Central Valley Project other than those that have been
9 discussed, and in my frame of reference, this water also
10 can go to the Clifton Forebay and down all the other parts
11 of the canal to the southern part of the state, and nobody
12 has touched on that aspect.

13 A I believe there will be some impact. I am not an
14 expert on that. It will depend on a lot of other factors.

15 The Bureau of Reclamation is going to appear this
16 morning and I think they will have experts that can answer
17 that.

18 MR. CREGER: Thank you.

19 MR. STUBCHAER: Okay. Do you wish to have your
20 exhibits introduced?

21 MS. NIEBAUER: I would like to offer as exhibits in
22 this proceeding the Fish and Wildlife Service Exhibits 1
23 through 3, which are qualification statements; 4 and 5,
24 which are the written testimonies; 7, which is the final
25 ruling listing Delta smelt as threatened; 8, which is the
26 peer review publication regarding the status of the smelt;
27 9, which is the Natural Heritage Institute petition listing
28 the longfin smelt, the Sacramento splittail, and then,
29 also, by reference U. S. Fish and Wildlife Service Exhibit
30 10, which is D-1630.

31 MR. STUBCHAER: Which version?

32 MS. NIEBAUER: December, 1992.

33 MR. STUBCHAER: Which has been superseded. The
34 last version was dated in April.

35 All right. Do you agree with the numbering?

36 MS. KATZ: Yes.

37 MR. STUBCHAER: Are there objections to accepting
38 these exhibits?

39 MR. SOMACH: I object to 9 and 10.

40 MR. STUBCHAER: On what basis?

41 MR. SMITH: Nine, because no one has testified as to
42 the truthfulness. They have just simply submitted it as
43 information, and the State Board draft order, again, has
44 not been adopted. Its relevance is questionable in that
45 context.

1 MR. STUBCHAER: We will accept the exhibits into
2 evidence but consider their status in giving weight to the
3 evidence. For instance, the D-1630 you were referring to
4 is a draft circulated for comments and had substantial
5 revisions after receiving the comments, so that will be
6 noted in giving weight to the exhibit.

7 With those qualifications, the exhibits are
8 accepted.

9 MS. NIEBAUER: That's fine, thank you.

10 MR. STUBCHAER: Next we will have PG&E Company.
11 Mr. Moss, you have 30 minutes.

12 MR. MOSS: Good morning, Mr. Stubchaer. My name is
13 Richard Moss. I am an attorney with the PG&E Company.

14 I have a brief opening statement. In presenting our
15 case in chief, PG&E Company does not waive our assertion of
16 FERC pre-emption and respectfully cautions the Board that
17 their apparent unwillingness to accept the meaning of the
18 results that it obtained in California versus FERC, that's
19 the Ninth Circuit, may, in fact, result in further
20 litigation, including exposure of litigants and their
21 attorneys to sanctions, and we feel this is something the
22 Board should consider before issuing any permit to the
23 applicants in the face of PG&E's FERC licenses.

24 PG&E offers the testimony of one witness, Frank R.
25 Lynch. Mr. Lynch is Senior Hydrographer with 27 years of
26 experience with PG&E, and he is well known to the Board as
27 he has previously testified in the Bay-Delta and other
28 Board proceedings.

29 The purpose of Mr. Lynch's testimony is to briefly
30 describe any elements of the facilities operations and
31 water rights associated with PG&E's El Dorado and Chili Bar
32 FERC licensed project that were not otherwise covered in
33 the applicant's testimony.

34 Mr. Lynch will also discuss the terms of the 1919
35 contract under which PG&E supply water to El Dorado
36 Irrigation District, water which the applicants in their
37 testimony have claimed as their secondmost important source
38 of supply, and an integral part of their proposed project.

39 Mr. Lynch will state PG&E's position that
40 renegotiation of this contract so that PG&E's electric
41 ratepayers are more appropriately compensated for the loss
42 of generation associated with this water delivery is a key
43 requirement before PG&E will consider giving its consent to
44 the subject applications.

1 Lastly, PG&E apologizes to the Board and other
2 participants in this hearing for the unfortunate and
3 unintentional inclusion in the front of PG&E Exhibit 2 the
4 FERC license for the El Dorado project of eight pages of
5 irrelevant internal PG&E transmittal documents, which we
6 unfortunately just copied along with everything else, and
7 which we withdraw these eight pages, starting with the
8 December, 1986, memo and concluding with the October 13,
9 1982, memo from Mr. Howard. They are not part of the
10 license and really have no relevance to the license.

11 With these deletions, of course, PG&E will move the
12 exhibits at the appropriate time into evidence.

13 Exhibit 1 is a map of the project area.

14 Exhibit 2 is the El Dorado FERC license.

15 Exhibit 3 is the Chili Bar FERC license.

16 Exhibit 4 is the 1919 agreement.

17 What we are labeling as Exhibit 5 is the written
18 testimony of Mr. Lynch and I have spoken to the staff about
19 that. It was not previously labeled.

20 And as Exhibit 6 we have Mr. Lynch's qualifications.

21 FRANK R. LYNCH,

22 having been sworn, testified as follows:

23 DIRECT EXAMINATION

24 by MR. MOSS:

25 Q Mr. Lynch, were you sworn as a witness in this
26 proceeding?

27 A Yes, I was.

28 Q Would you please describe your current position with
29 PG&E.

30 A I am the Senior Hydrographer for PG&E's Southern
31 Area Hydro. PG&E's facilities on the South Fork of the
32 American River are within my area of responsibility.

33 Q And again, bearing in mind the testimony given
34 earlier, would you please describe PG&E's facilities on the
35 South Fork American River.

36 A Yes. Exhibit 1 shows the location of all of our
37 facilities on the South Fork of the American River. PG&E
38 also operates FERC projects on the South Fork. They are
39 projects No. 184, the El Dorado project; and project 2155,
40 the Chili Bar project. Their locations and stuff are
41 described more fully by the applicants and I won't go
42 through all of my written testimony on that.

43 The PG&E's hydroelectric facilities associated with
44 the South Fork American River include four storage
45 reservoirs and two forebays. The reservoirs are Medley

1 Lake, Echo Lake, Caples Lake and Silver Lake. The forebays
2 are El Dorado forebay and Chili Bar Reservoir.

3 The El Dorado Canal diverts water from the four
4 storage reservoirs, from the South Fork of the American
5 River at a point just below the confluence of Silver Creek.
6 The canal contains ditch, flume and tunnel sections and is
7 approximately 22 miles in length. It has a capacity of 156
8 cubic feet per second.

9 The priority of the original canal dates back to
10 1856, and was adjudicated by the California Supreme Court.

11 The water rights under which this system now
12 operates are as follows: By direct diversion of the
13 natural flow of the South Fork of the American River at the
14 intake, 70 cfs appropriation 1856, 86 cubic feet per second
15 under Application 1440, Permit 994 and License 2540; from
16 Echo Creek, tributary to the upper Truckee River to the
17 Echo Canal, 30 cubic feet per second under original
18 appropriation with a priority of 1860; from Alder Creek to
19 Alder Creek feeder, 51 cubic feet per second under
20 Application 6383, Permit 3481 and License 254.

21 Also, diversion to storage and I will summarize
22 these: For Echo, Medley, Silver and Caples with a capacity
23 of 37,376 acre-feet.

24 Under the original appropriation, 1860 to 1875, a
25 total of 7,360 acre-feet. Under Application 654, Permit
26 619, License 438, dated 1917, 13,000 acre-feet.

27 Application 1441, Permit 995 and License 2541,
28 22,500, for a total combined right of 42,860 acre-feet.

29 This water was utilized in El Dorado powerhouse
30 under FERC's License 184 and Chili Bar license 2155.

31 El Dorado powerhouse develops power from a head of
32 1,910 feet and a flow rate of 163 cubic feet per second.

33 It has a normal operating capacity of 21 megawatts,
34 which is enough power for approximately a population of
35 21,000 people. It annually produces 116 million kilowatt
36 hours of electricity.

37 The Chili Bar powerhouse operates, as I said, under
38 project License 2155. There is a correction to my written
39 statement. The powerhouse develops a head of 80 feet and
40 has a maximum flow of 2200 cubic feet per second.

41 The normal operating capacity of the powerhouse is
42 7.8 megawatts and in an average year produces approximately
43 37 million kilowatt hours of electricity.

44 Q Would you please provide an overview of the
45 operation of PG&E's four upstream storage reservoirs.

1 A Yes. The four upstream reservoirs, Medley, Caples,
2 Echo and Silver, are operated to argument the El Dorado
3 project requirements during periods when the natural flow
4 at the diversion dam on the South Fork of the American
5 River is not capable for meeting the power for irrigation
6 for recreational and FERC's mandated instream releases.

7 The draft rates and releases from these reservoirs
8 depend heavily on the type of water year at hand. In the
9 winter and spring, the storage reservoirs capture runoff
10 for use later in the year.

11 As far as possible, reservoir spill and runoff below
12 the reservoir is diverted into the El Dorado Canal. If the
13 canal carrying capacity is not exceeded, the canal may pick
14 up additional flow from various small streams along its 22-
15 mile length.

16 A portion of the water from the forebay is diverted
17 into the canal owned and operated by El Dorado Irrigation
18 District. PG&E supplies this water to El Dorado Irrigation
19 District under contract for irrigation and domestic
20 supplies that dates back to the 1920s.

21 The maximum flow rate for this diversion is 40 cubic
22 feet per second with an annual maximum use of 15,080 acre-
23 feet. This volume and flow rate are established by a 1919
24 agreement between predecessor company Western States Gas
25 and Electric and predecessor to El Dorado Irrigation
26 District, El Dorado Water Company subsequent to a 1918
27 California State Railroad Commission Decision No. 5409.

28 The bulk of the water is used for generation at the
29 El Dorado powerhouse. From the forebay the water drops
30 almost 2,000 feet through the penstock to El Dorado
31 powerhouse.

32 After passing through the turbines, the water
33 returns to the South Fork where Sacramento Municipal
34 Utility District uses it through their Mohawk facility, and
35 then from Slab Creek water is released by SMUD on down to
36 our Chili Bar project.

37 Q Why does PG&E store water in the spring and release
38 it in the summer and fall?

39 A PG&E uses the reservoirs to store excess water which
40 would otherwise bypass the powerhouses, for use later in
41 the year when it can be put to beneficial use. This
42 increases the total generation from both the El Dorado and
43 Chili Bar powerhouses.

44 In addition to increased generation due to capturing
45 winter and spring spills holding water until later in the

1 summer and fall increases the value of the water for
2 generation purposes. Because of the general abundance of
3 water during the winter and spring periods, the value of
4 generation is reduced during those seasons.

5 In the fall and late summer, the value of generation
6 rises rapidly due to the reduced availability of water.
7 Consequently, the value of water for generation purposes is
8 increased by storing the water in the spring runoff for use
9 during the summer and fall.

10 PG&E also provides recreational and environmental
11 benefits through their operation of the FERC project.

12 Q Mr. Lynch, as far as you are aware, could
13 circumstances arise that might lead PG&E to operate the
14 reservoirs or its El Dorado Canal in a different manner?

15 A Yes. Under various circumstances through operations
16 that may be different than I just explained. For example,
17 last year we drafted Echo Lake earlier than in previous
18 years so we could make required repairs to the dam.

19 Q And again, as far as you know, will PG&E always
20 operate its facilities as it has in the past?

21 A Not necessarily. PG&E will continue to operate its
22 hydroelectric facilities in accordance with our FERC
23 licenses which we have introduced as PG&E Exhibits 2 and 3.
24 However, license conditions sometimes change.

25 For example, in 1984, a new fish release regime was
26 established for the El Dorado project. Furthermore,
27 reservoir operations are very dependent upon annual water
28 yield and electric system demand. Annual water yields from
29 year to year and electric demands also are a very dynamic
30 portion of this call for water.

31 Q Briefly, please describe the recreational facilities
32 and benefits associated with PG&E's El Dorado and Chili Bar
33 projects.

34 A Currently these recreational facilities are fairly
35 extensive. Campgrounds and picnic areas are presently
36 provided at Silver Lake.

37 Project reservoirs are currently maintained as high
38 as practical during the summer months consistent with FERC
39 license conditions and downstream project requirements.

40 Q What are some of the operational constraints and
41 conditions under which PG&E operates the El Dorado and
42 Chili Bar projects?

43 A PG&E operates the El Dorado system, including Chili
44 Bar, in compliance with the criteria and restrictions set
45 forth in our FERC operating licenses. The conditions

1 require PG&E to maintain bypass flows below our diversions
2 and to operate the reservoirs within stipulated maximum and
3 minimum elevations.

4 In addition, ramping rates are also imposed at
5 Caples, Silver and Chili Bar Reservoir to avoid stranding
6 fish and endangering fishermen in the river.

7 Q Are you personally familiar with the 1919 contract
8 that you spoke of earlier between Western States Gas and
9 Electric Company and El Dorado Water Company, which I might
10 add is labeled and marked PG&E Exhibit 4.

11 A Yes, I am.

12 Q Would you briefly summarize this contract.

13 A The contract is for a water purchase contract
14 wherein the Western States Gas and Electric Company
15 contracted to sell water to El Dorado Water Company at
16 various times and prices. In exchange, the El Dorado Water
17 Company stipulated to forego any additional rights to water
18 associated with Western States Gas and Electric Company,
19 which is the predecessor to PG&E. The Western States Gas
20 and Electric Company --

21 Q I might just go on here, are you familiar with
22 paragraphs 10 and 11 of the 1919 contract?

23 A Yes, I am.

24 Q And would you briefly describe paragraphs 10 and 11.

25 A Paragraph 10 sets the maximum amount of water the
26 Company is obligated to deliver in one year to 304,160
27 miner's inch days or 15,080 acre-feet.

28 The capacity delivery rate is also set at a maximum
29 flow rate of 40 cubic feet per second.

30 The contract goes on to stipulate that the foregoing
31 maximum rates and total annual volumes are fixed and
32 established and that no right in any future water in excess
33 of those quantities shall or may be acquired by the
34 consumer. That's EID, or any other people purchasing water
35 from El Dorado Irrigation District.

36 In addition, paragraph 11 delineates the source of
37 water. The contract expressly states that the limit of the
38 water shall be the ordinary or natural streamflow of the
39 American River at the El Dorado intake, plus the water
40 stored at Echo Lake of 2,000 acre-feet and 5,000 acre-feet
41 in Silver Lake.

42 The contract also states that the consumer, El
43 Dorado Irrigation District, shall have no right to call
44 upon the Company to deliver any portion of storage water
45 that the Company, PG&E, may impound in Medley, Twin, which

1 is Caples, or any reservoir the Company may construct in
2 the future, including any storage increases at the existing
3 reservoirs.

4 Q As far as you are aware, has PG&E granted the
5 applicant, EID, access to any of PG&E's four storage
6 reservoirs to operate and store water?

7 A No.

8 Q As far as you are aware, has PG&E granted the
9 applicants access to PG&E's El Dorado Canal diversion works
10 or to the canal itself to operate to divert water?

11 A No.

12 Q To the best of your knowledge, does EID have any
13 ability to physically control water at PG&E's storage
14 release reservoirs or at the El Dorado Canal diversion?

15 A No.

16 Q Has PG&E entered into any contract or agreement that
17 gives the applicant permission to use or operate any of
18 these diversion or storage facilities?

19 A No.

20 Q As far as you are aware, have the applicants made
21 any capital investment in any of these facilities?

22 A No.

23 Q As far as you are aware, do the applicants share in
24 the operation and maintenance costs of either the storage
25 reservoirs or the canal?

26 A No.

27 Q Have applicants entered into any contract or
28 agreement with PG&E that would require PG&E to operate
29 these facilities to enable the applicants to exercise
30 control over the waters they have applied for?

31 A No.

32 Q Now, previously at this hearing, Mr. Reeb testified
33 that the applicants had not negotiated with PG&E for a
34 resolution of our protest. That's my characterization of
35 his testimony.

36 As far as you are aware in 1993, have there been any
37 substantive discussions between EID and PG&E to resolve
38 PG&E's water right protest of the subject applications?

39 A No, not to my knowledge.

40 Q As far as you are aware, would PG&E be likely to
41 drop its water rights protest without a renegotiation of
42 the 1919 agreement?

43 A No, that would not be acceptable.

44 Q And as far as you are aware from whatever source,
45 have there been any discussions with PG&E and the

1 applicants on the possible sale of the El Dorado project to
2 the applicants?

3 A Yes, but I read it in the paper.

4 MR. MOSS: Thank you. That concludes the direct
5 testimony.

6 MR. STUBCHAER: All right. Who wishes to cross-
7 examine PG&E? I see three. All right, Mr. Somach.

8 MR. GALLERY: I'm sorry, I meant to raise my hand
9 also.

10 MR. STUBCHAER: All right.

11 CROSS-EXAMINATION

12 by MR. SOMACH:

13 Q Has El Dorado, either EID or the County Water
14 Agency, in the context of these water rights hearings or
15 these permits, come to you and asked you to modify in any
16 way the operation of the upstream lakes?

17 A No.

18 Q Now, if there was to be a major modification of the
19 operations of those lakes, would that not require some
20 modification of your FERC license?

21 MR. MOSS: That's a legal question, but to the
22 extent he can answer, I don't have an objection.

23 MR. STUBCHAER: All right.

24 A If there was a change in operation, we would
25 certainly have to consult with FERC.

26 MR. SOMACH: Q And might a change in operation
27 require some notice?

28 MR. MOSS: Again, that's a legal question. I don't
29 think he has competence to answer.

30 A I can't answer that.

31 MR. SOMACH: Q With respect to that, do you have
32 your written testimony in front of you?

33 A Yes, I do.

34 Q Will you turn to your question and answer 7.

35 A Okay.

36 Q Particularly answer 7. Has El Dorado come to you
37 and asked you to in any way, shape or form, modify your
38 operations so that you would not be able to maintain as
39 high as practical during the summer months consistent with
40 your license, those lakes?

41 A There has been no contact with EID in either
42 direction.

43 Q With respect to the answer to -- these are your
44 answers to questions 14 through 20?

45 A Yes.

1 Q If I understand that whole series of question, what
2 you are trying to articulate there is that El Dorado really
3 has no ability to change anything with respect to the
4 operation of these PG&E facilities; is that correct?

5 A That's correct.

6 Q And so that, if there are any problems with respect
7 to fish and wildlife, those problems rest entirely in the
8 hands of PG&E and not in the hands of these applicants; is
9 that correct?

10 MR. MOSS: Let me ask -- this question is somewhat
11 vague. Problems where?

12 MR. SOMACH: Q With respect to the facilities being
13 discussed in questions 14 through 20. Is that specific
14 enough?

15 A The answer would be yes, but if the Board did allow
16 you to acquire consumptive rights, we would not be
17 responsible for future operations as they are today.

18 Q Are you contending that the State Board could order
19 you to operate those facilities in a way or manner
20 different than the way they are being operated pursuant to
21 your FERC license?

22 A No, but I could give you an example. For example,
23 not foregoing the Cleveland fire, from what I understand
24 here the water would be used for up to 115,000 people
25 somewhere down the road to the year 2020.

26 If we are unable to deliver water down that canal
27 system for some unforeseen reason, it seems to me that
28 those people are kind of hung out to dry.

29 Q Well, that's the situation that exists now; isn't
30 it? The fact of the matter is that at least 15,000 acre-
31 feet of water that comes down that canal is utilized within
32 the EID service area; is that correct?

33 A That's correct.

34 Q So that problems associated with outages of El
35 Dorado Canal, whether they are now or in the future, don't
36 change in terms of the need to move water into the service
37 area for people to consume; isn't that correct?

38 A Fifteen thousand is a limited supply. You are
39 asking for considerably more water off the system.

40 MR. SOMACH: I have no further questions.

41 MR. STUBCHAER: All right. I think we will inter-
42 rupt the cross-examination for a 12-minute break.

43 (Recess)

44 MR. STUBCHAER: All right, we will reconvene.

1 A That is correct, but all of the reservoir elevations
2 and streamflows that are telemetered into our Wise
3 switching center gives me a report on the actual water
4 conditions on a daily basis.

5 Q So you know what the level of the lakes is at any
6 given point and you make the decision about when to open
7 the valve, how far to open it, how much water to release?

8 A That's correct.

9 Q Do you calculate how much power the Company needs at
10 a given time and week, and then you make the decision on
11 when to turn the valve?

12 A Generally, we like to start our draft on the
13 reservoirs to coincide with the highest price for
14 replacement costs of the power, which is later in the
15 summer, early fall.

16 Q My question was, does San Francisco tell you when it
17 needs power and how much, or what is your role in that
18 decision?

19 A El Dorado is considered a small hydro and we are
20 responsible for dispatching the entire project.

21 Q Does the power that comes from the two powerhouses
22 up there, El Dorado powerhouse and Chili Bar powerhouse,
23 does that supply El Dorado County with its electrical
24 needs?

25 A It supplies a portion of it into what we call the
26 distribution system, and that's 12,000 volts below. It
27 also puts power into our 60 kv line, which are connected
28 throughout our system to other generating facilities.

29 Q The 60 kv line then transmits power outside the
30 area?

31 A That's correct.

32 Q So these powerhouses supply more power than that
33 area up there in El Dorado County uses?

34 A Not necessarily. It depends upon the load for the
35 day and things of this nature.

36 Q If the population up there in that area should
37 increase two times or two and a half times as the
38 applicants anticipate, you would have a greater need for
39 power in that area; is that correct?

40 A That's correct.

41 Q Now, I want to ask you about Silver Lake, to get
42 some specific facts clear. As I understand, at Silver Lake
43 you had an old water right to store 5,000 acre-feet?

44 A That's correct.

1 Q Which the Company acquired when it took over the
2 system, and then you have a license from the Water Board
3 for another 5,000 acre-feet for storage in Silver Lake; is
4 that correct?

5 A Yes, it is.

6 Q So, your claimed water rights in Silver Lake are
7 10,000.

8 Now, I wanted to get clear on just how much water
9 Silver Lake holds, how much is stored there by the Company.
10 El Dorado witnesses indicated a total storage of something
11 like 11,000. I was trying to match these numbers with
12 actually what the reservoir will hold.

13 A The actual physical limitation is 8,726 acre-feet.

14 Q Is that as much water as you can get into the
15 reservoir when you fill it?

16 A That is correct.

17 Q So that's the high water line, you can't pack any
18 more water into the reservoir?

19 A No, the cup is full at this time unless there was
20 some reconstruction to occur.

21 Q Do you have a staff gage at the reservoir?

22 A We have a staff gage and a telemetry system that
23 monitors the lake level.

24 Q So what is the staff gage reading when the lake is
25 full up at the 8,750 number?

26 A The staff gage reads 23.1.

27 Q That's the high water line?

28 A That would be the high water line on the lake. That
29 is also controlled by the FERC license, or Dam Safety of
30 the State of California.

31 Q So, you can't legally store any more than that?

32 A Not without modifications to the dam.

33 Q What would you have to do if you wanted to store
34 more water? Can you just put some flashboards in there and
35 physically store more water aside from safety standards?
36 Physically, could you put some more boards in?

37 A Not at this time. You would have to add some
38 additional physical structures to do that.

39 Q Does Silver Lake fill every year of its own accord
40 -- that's not a very good question.

41 Do you try to get Silver Lake full every year?

42 A It is our intention to top off all the reservoirs
43 under all types of water yield conditions. It is not
44 always possible, but that's our operating direction.

1 Q And the reason is that that gives you the most water
2 to produce power as you need it?

3 A That's correct.

4 Q And are you able to fill Silver Lake every year?

5 A I believe one of the only years we did not fill it
6 was 1977.

7 Q And how long does your experience with the lake go
8 back?

9 A To 1968.

10 Q So that since 1968, you have been able to manage it
11 so that the lake fills every year?

12 A Yes.

13 Q Except for 1977?

14 A Or there might be a few instances, and I would have
15 to look at the record to make sure it wasn't for
16 construction.

17 Q And then the period of filling, you typically fill
18 it with the snowmelt in the spring, or what is the period
19 that you fill it?

20 A The period that we fill it, we typically would like
21 to get the reservoir down by mid-February and anticipate
22 the runoff to March, about March 20, and conclude somewhere
23 around the last week of June.

24 Q And so, you want to try to empty the reservoir in
25 the winter and when you do that, you get power, I guess, by
26 emptying -- you are able to use that power by emptying the
27 reservoir?

28 A It depends upon the snow survey. We start snow
29 surveys the 1st of January and make an assessment based on
30 how much water we want to continue drawing out of that
31 reservoir.

32 Q But then, you want to fill it in the spring and
33 typically you have it full in May or June. Is that about
34 when it happens?

35 A That's just about the period of time that it is
36 full.

37 Q Now, I want to know how do you go about forecasting
38 how much runoff you are going to get into the reservoir at
39 Silver Lake so that you can make sure you fill it?

40 A We've got three snow survey courses of there that we
41 monitor the first of every month and from the snow-water
42 equivalent data that is derived from that, we will project
43 forward based on normal precipitation and something less
44 than normal precipitation, and make some operating
45 decisions based on that information.

1 Q So you have three checkpoints in the Silver Lake
2 watershed; do you?

3 A Yes, and they have been monitored since the early
4 twenties.

5 Q And you check them the first of every month?

6 A Physically go out and take snow survey measurements
7 which would measure the water content of the snow and
8 determine whether it is above normal, normal or below
9 normal, and make our decisions based on those measurements.

10 Q So, coming into the spring each year you can make a
11 pretty good judgment of how much water is going to flow
12 into Silver Lake and whether it is going to fill or not?

13 A Definitely.

14 Q And is this information just PG&E's own information
15 or --

16 A No, we share that with the Department of Water
17 Resources in a cooperative program.

18 Q So, somebody could go to the Department of Water
19 Resources and find out what your readings are?

20 A Oh, absolutely.

21 Q When I was questioning the El Dorado witnesses
22 yesterday, Mr. Lynch, I raised the question about the
23 statement in the EIR at page 6.7 of the EIR that the FERC
24 license has a condition in it which requires the Company to
25 hold Silver Lake water surface at as high a level as
26 possible during the summer months.

27 There was some question about whether that was
28 really a part of your license, and I wanted to ask you
29 about your understanding of whether or not that is or is
30 not a requirements of PG&E's license?

31 A Yes, that's Exhibit S of our license and it is part
32 of our license.

33 Q So the Company considers that to be an obligation
34 under its FERC license?

35 A That's correct.

36 Q And then, I also asked the El Dorado witnesses about
37 a statement in the EIR to the effect that there was a
38 reference to PG&E's formalized operating criteria for the
39 reservoirs, and the witness indicated that there was
40 nothing formal to his knowledge.

41 I want to ask you that question, does the Company
42 have a formal structure operating criteria for the
43 reservoirs?

1 A It is pretty much based on the water yield and
2 measurements we take during the wintertime to try to
3 maximize reservoir storage.

4 Q Is there anything written down in a handbook?

5 A Well, recently I write stuff down in my office, but
6 it is not a formal process.

7 Q It is not a mandate from your superiors that you
8 operate this way? You don't have a memorandum in your file
9 from your superior that says you must operate the
10 reservoirs this way?

11 A No.

12 Q Now then, I next want to ask you about a description
13 of the Company's operation and I will represent to the
14 Chair I came across this page from a 1969 report of the
15 Department of Fish and Game, and apparently at that time
16 Mr. Gervais was working for Fish and Game and was planning
17 to negotiate with PG&E about fish releases when they
18 relicensed in 1972, and it is a fairly descriptive account
19 of how the Company was operating at that time, and I wanted
20 to briefly review it with the witness and see if that's
21 substantially how he is operating the system today, and
22 what I propose to do was, I have some extra copies that I
23 could hand out so that you could follow what I am talking
24 about, and the other parties as well, if that's
25 permissible.

26 MR. SOMACH: I object. It is beyond the scope of
27 direct examination.

28 MR. STUBCHAER: Are you objecting to the use of the
29 document or the discussion of --

30 MR. SOMACH: I have no idea what the document is,
31 and in the context of the testimony, he is really reading -
32 - he can read anything, I guess, he wants to. I have an
33 objection to the introduction of the document as an
34 exhibit. I object to this line of questions as being
35 beyond the scope of direct examination. There was no
36 direct testimony touching on that area at all.

37 MR. STUBCHAER: He has talked about how he operates
38 the reservoir and is this an application on how he operates
39 the reservoir?

40 MR. GALLERY: Yes. It really gives us kind of a
41 detailed picture of how they operate the reservoir and how
42 they operate the different reservoirs in sequence to each
43 other. It kind of gives us a picture of what goes on up
44 there typically in the summertime, so I think --

1 MR. STUBCHAER: I will allow you to pursue that
2 line of questions, but then, whether or not the document
3 should be used is another question.

4 Is there objection to the use of the document? If
5 not, you would just have to read the question.

6 MR. GALLERY: Yes.

7 MR. MOSS: Does Mr. Gallery intend to introduce this
8 as an Amador exhibit?

9 MR. STUBCHAER: I don't know. If you are going to
10 use it, it should be introduced as an exhibit.

11 MR. GALLERY: Perhaps I could have it marked as
12 Amador Exhibit No. 18 for reference. I am not offering it
13 into evidence at this point.

14 MR. SOMACH: I still object. I have not been
15 provided a copy of this --

16 MR. GALLERY: With Mr. Stubchaer's permission, I
17 would pass it out to the parties.

18 MR. STUBCHAER: Are there objections to using this
19 document?

20 MR. SOMACH: I object. I have got page 18 of a
21 document. There is nothing that's page 17. I don't have
22 page 19, and I don't have anything else that goes with it.

23 MS. PETER: Point of order. This particular report
24 was cited in the EIR, which is Exhibit 30, submitted by El
25 Dorado County. It is on page 6-2.

26 MR. SOMACH: But the EIR was not the subject of any
27 direct testimony here. We are running far afield.

28 MR. VOLKER: May I make a point of order? We have
29 these incessant objections made on the scope of the direct.
30 Under 761(g), that's not a proper objection in this
31 proceeding. It says: *Parties shall have the right to*
32 *cross-examine opposing witnesses on any matter relevant tot*
33 *he issues even though that matter was not covered in the*
34 *direct examination.*

35 MR. STUBCHAER: I already ruled that he could
36 pursue the line questioning. All we are talking about is
37 the use of the document.

38 Mr. Jackson, were you going to address that?

39 MR. JACKSON: Yes, sir. I was going to point out
40 that beyond the scope objections died in the courts a long
41 time ago and has been dead here from the time regulations -

42 -

43 MR. STUBCHAER: That's not relevant to the use of
44 the document, but the question has already been ruled on.

1 I would say perhaps you should just read the questions and
2 --

3 MR. GALLERY: If it would help, Mr. Somach, I do
4 have a complete report and you are welcome to it.

5 MR. STUBCHAER: Would that cause you to remove your
6 objection, Mr. Somach?

7 MR. SOMACH: No, it does not. If he wants to go to
8 the line of questioning, and you have allowed him to do so,
9 I think he should do that, and there's no need to rely upon
10 the written document.

11 MR. STUBCHAER: All right.

12 MR. GALLERY: Q Mr. Lynch, this document states in
13 the second paragraph -- it begins by stating that the
14 natural streamflow available at your diversion dam into the
15 canal generally falls below the required canal diversion
16 during the first and second week of July, and then you
17 begin to draw on the storage.

18 The next sentence says that that water is released
19 from Lake Aloha to maintain diversion requirements. So, do
20 you start your draw from Lake Aloha first?

21 MR. LYNCH: A yes, we do.

22 Q Then it states, by late summer the stream further
23 decreases and Lake Aloha storage becomes depleted, as the
24 streamflow further decreases and Lake Aloha becomes
25 depleted drafts from Caples and Silver are used to
26 supplement Lake Aloha. That's true, I guess.

27 A That's true.

28 Q After Labor day when Lake Aloha has been drawn down
29 completely, Echo Lake storage is drawn upon.

30 A That is correct.

31 Q Then you say the storage in Echo is quickly depleted
32 and releases from Caples and Silver maintain power until
33 the last two weeks of October, generally when the power
34 shuts down for repair and maintenance.

35 A That is correct.

36 Q And then, when the project resumes operation in
37 November, releases from Caples and Silver, plus increased
38 streamflow from the winter storms, snowmelt, provide the
39 water through the winter period; is that correct?

40 A That's correct.

41 Q Then you say there are other factors which are
42 considered in the use of the project storage. Echo water
43 is not available for release until after Labor Day holiday
44 because summer homes on the upper end of the land are
45 vacated.

1 A That is correct.

2 Q So, you hold that up until after the people are not
3 using those anymore?

4 A That is correct.

5 Q And then you say these homes are inaccessible except
6 by four and a half miles of trail when that lake is drawn
7 down?

8 A That is correct.

9 Q Then you say the same consideration applies to
10 Silver Lake. There are extensive private and public
11 recreation developments which require maintenance of high
12 lake level throughout the summer. These factors are
13 considered to the maximum extent possible in the operation
14 of the project. So then, that means that you hold Silver
15 Lake up also because of the presence of summer homes and
16 recreation interests?

17 A That's basically what is presented in our Exhibit S
18 -- basically the same concept as contained within our
19 Exhibit S which is attached to our operating License 184 --
20 worded maybe a little bit different.

21 Q Okay. Well then, Exhibit S was not in your exhibit
22 that you presented as the license for the PG&E FERC
23 project?

24 A Yes, it is.

25 Q It wasn't physically in there. It wasn't in the
26 packet of material that was presented as part of the
27 Company's license?

28 A Yes, it is Exhibit S.

29 Q Oh, Exhibit S was included? I apologize. I did not
30 find it in my packet. That is why I was questioning.

31 Then, just going toward the end of the third
32 paragraph, Mr. Lynch, you say under project operation, Lake
33 Aloha reaches its maximum drawdown by September while
34 Caples, Silver and Echo reach maximum drawdown in the fall
35 and winter.

36 MR. STUBCHAER: I have a question. You say, you
37 say. Is this quoting something he wrote?

38 MR. GALLERY: No, this is quoting something that was
39 actually written by a Department of Fish and Game employee.

40 MR. STUBCHAER: Then, the question is, you say this
41 and you say that.

42 MR. MOSS: It is apparently Mr. Gervais, whoever
43 that is, who apparently said this.

44 MR. STUBCHAER: You might rephrase the question and
45 say, is this what you do?

1 MR. GALLERY: Yes. Maybe I can clear that up by
2 asking Mr. Lynch, what is stated here by Mr. Gervais in his
3 report, I want you to confirm that that is, in fact, the
4 way you're still operating the reservoir today.

5 MR. STUBCHAER: He can't refer to that until we
6 admit it into evidence.

7 MR. GALLERY: For that purpose, to aid in expediting
8 this, I would then plan to offer this into evidence as what
9 appears to be a fairly accurate, up to date, description of
10 how the reservoirs are operated. I think it has some value
11 to the Board to have a more precise picture of what happens
12 between the respective reservoirs and how PG&E says there
13 is nothing formal, but this appears to be as close as we
14 can get to a written description of how the operation takes
15 place, and I think it has some value to the proceedings.

16 MR. STUBCHAER: All right.

17 MR. GALLERY: For that purpose.

18 MR. SOMACH: I have no objection, nor do I really
19 care one way or the other about the whole line of
20 testimony. I just have some difficulty understanding its
21 relevance in light of the fact that regardless of how PG&E
22 operates, all this permit goes to is taking water based
23 upon that operation and the operation could be exactly like
24 that, like S, like something else. That's all that this
25 application goes to.

26 So, I guess my concern is merely relevance.

27 MR. STUBCHAER: I don't know how relevant it is
28 going to be, but I do find it interesting to understand how
29 the system operates.

30 MR. SOMACH: And that's fine and we have no
31 objection.

32 You can introduce it as an exhibit, if you like, and
33 that's fine.

34 MR. GALLERY: All right. I would then offer it into
35 evidence, and if any of the other parties would like copies
36 of --

37 MR. STUBCHAER: Can we do that now, Ms. Katz?

38 MS. KATZ: He can do it for all the exhibits, or we
39 can --

40 MR. STUBCHAER: I mean during cross-examination
41 introduce it?

42 MS. KATZ: Sure.

43 MR. STUBCHAER: All right.

1 MR. GALLERY: This would be Amador County Exhibit
2 No. 18, and your recommendation, Ms. Katz, was to offer it
3 along with my other exhibits?

4 MS. KATZ: You can do it at any time.

5 MR. STUBCHAER: We will do it now.

6 MR. GALLERY: I will offer this as Amador's Exhibit
7 No. 18.

8 MR. STUBCHAER: And for the record, would you
9 identify more completely the document from which this page
10 was extracted? I don't see that on here.

11 MR. GALLERY: The document is entitled *Effects on*
12 *Fish and Wildlife Resources of the El Dorado Hydroelectric*
13 *Project, FERC 184, by Robert Gervais of the Department of*
14 *Fish and Game, Region 2, and it is entitled, Water Project*
15 *Branch Administrator of Report No. 69-2, February, 1969,*
16 which apparently is also referred to in the Environmental
17 Impact Report.

18 MR. SOMACH: From my understanding, all that is
19 being offered as an exhibit is the one page regarding
20 operation.

21 MR. STUBCHAER: Page 18.

22 MR. GALLERY: Yes, that's all.

23 MR. STUBCHAER: All right. Without objection, it
24 is accepted.

25 While we are paused, Mr. Gallery, how much longer
26 will you be?

27 MR. GALLERY: Actually, a good five minutes, Mr.
28 Stubchaer.

29 MR. STUBCHAER: All right.

30 MR. GALLERY: Q Next, I want to ask you, Mr. Lynch,
31 assuming that you fill the reservoirs at some point in the
32 spring, May or June, could you tell us briefly then if you
33 then made no power releases from Silver Lake during June,
34 July, August and September, how would the lake level drop
35 during those four summer months?

36 A It would only be an estimation on my part. The lake
37 level is 23.1. I would suspect that due to evaporative
38 losses and instream flow mandated losses through our FERC
39 license that we would be dropped down between 16 and 17
40 feet depending upon evaporative losses.

41 Q By the end of September?

42 A Somewhat in that neighborhood, yes.

43 Q The footage that you refer to is the number of feet
44 on your staff gage?

45 A That is correct, approximately 7 feet of lost head.

1 Q My next question is, assuming that an agreement is
2 made between PG&E and El Dorado for taking of some of your
3 power releases for consumptive use, can you tell me whether
4 an outsider could come to the Company and get information
5 about the amount of water being taken by El Dorado from
6 month to month, or week to week, under that contract?

7 MR. MOSS: First of all, I would object because we
8 don't even know what this contract looks like or any
9 provision of it. It would be speculative for the witness
10 to anticipate something that doesn't exist or how it would
11 be administered.

12 MR. GALLERY: Well, I asked the question because my
13 experience with PG&E in the past has been when we try to
14 get information from them, they invoke confidentiality and
15 I am concerned that an outsider might meet the same closed
16 door if we were to ask in the future about water taken by
17 El Dorado under some kind of agreement.

18 And you have to assume that there would be some kind
19 of agreement. That seems to be a given of the project.

20 Can the witness answer?

21 MR. MOSS: Again, it is purely speculative and
22 certainly Mr. Lynch is not a policy maker who decides on
23 the dissemination of information.

24 MR. GALLERY: Mr. Lynch, does keeping Silver Lake
25 full through the summer recreational season fit in with
26 PG&E's power needs? Has that been your experience?

27 A All the lakes are used to draft for power and
28 irrigation system needs later in the summer and fall.

29 Q And when you say later in the summer, are you
30 talking about the period -- can you be more specific about
31 the months?

32 A Basically, under our Exhibit S in regard to Silver
33 Lake, it states that the water surface will be maintained
34 at as high a level as possible during the summer months.
35 Nevertheless, at times seepage from the reservoir and fish
36 releases may exceed inflow making it impossible to maintain
37 the lake at its full level for recreational purposes.

38 Q Well, your fishery release obligations -- you don't
39 have a fixed fishery release obligation when the inflow is
40 less than your number. Do I understand correctly your fish
41 release is two second-feet or the natural inflow?

42 A We release two cubic feet per second when the lake
43 is full. The only time we get down to natural flow is when
44 the lake has been exhausted.

45 Q I'm sorry.

1 A The only time we go below two cfs is when the lake
2 is exhausted.

3 Q So that even when the natural inflow is less than
4 two cubic feet per second in August, you're still releasing
5 two second-feet.

6 A We are still releasing two second-feet.

7 Q Do you understand that to be your obligation under
8 your FERC license?

9 A We have no way of monitoring the actual natural flow
10 that occurs in that basin.

11 Q And is that the reason you continue to release two
12 second-feet?

13 A That is correct.

14 Q Do you have any opinion as to whether sometimes the
15 inflow is less than two cubic feet per second during the
16 summer or late summer?

17 A We really haven't made a determination on the actual
18 natural flow above the lake during the summer.

19 MR. GALLERY: I believe that's all I have, Mr.
20 Stubchaer.

21 MR. STUBCHAER: Mr. Creger?

22 CROSS-EXAMINATION

23 by MR. CREGER:

24 Q Mr. Lynch, could you briefly describe historically
25 how the El Dorado powerhouse and the Chili Bar powerhouse
26 have been operated, and my question is directly towards
27 peaking versus baseline.

28 A Both powerhouses are used for peaking purposes. El
29 Dorado uses the El Dorado forebay, if the base flow is only
30 producing, let's say, nine megawatts worth of power, we
31 will bring the powerhouse up to the full load, 21
32 megawatts, during the period of peak. Chili Bar is pretty
33 much dependent upon the upstream releases from SMUD.

34 Q Do I understand correctly that peaking power could
35 be described as if this power came to my home or my area on
36 a 105-degree day, and I came home from work and I reached
37 over and turned on the power switch for the air
38 conditioner, and everybody else in my area did the same
39 thing, this is what peaking power is used for, to serve
40 those kinds of needs?

41 A That's correct. It's used during the peak load
42 condition because hydro can respond quickly.

43 Q How then will the consumptive use by El Dorado water
44 that is used for peaking purposes, and this has been used

1 historically -- you said historically these power plants
2 have been serving the peaking power type needs.

3 If PG&E is paid for power foregone, what happens
4 when those people want to turn that same switch on?

5 A It would only be hypothetical, but it would depend
6 upon the type of year. Eleven megawatts on our system is
7 fairly small when the peaks are running 21,000 megawatts.

8 Q But we are actually foregoing power in that regime?

9 A That's correct.

10 Q Is the replacement of that really available? In
11 other words, my understanding of a hydraulic system like
12 this is you can literally bring it on line and be
13 productive in a very short order of time, so if we give
14 this electricity away, how do you recover it?

15 A Your analogy would have to assume the water would be
16 taken above the El Dorado powerhouse. It would depend upon
17 the amount that was taken. It would shorten the period of
18 peaking that was going on in the powerhouse.

19 Q One of the results of this proposal is the positive
20 loss of electrical peaking power. It is not something that
21 can be replaced.

22 A What would have to happen, however small it would
23 be, the base load of the plants would have to cover that
24 during those periods of time.

25 Q So, in one respect, I am kind of switching
26 resources, I am switching a water resource for an oil
27 powered or fossil fuel.

28 A Yes.

29 Q Your current discussion with Mr. Gallery addressed
30 the maximum level of Silver Lake, and many of us have been
31 depending upon the tables in Appendix A of the EIR to make
32 analyses and this sort of thing, and we have a difference
33 in the numbers there.

34 If I take the numbers that are in the table which
35 Sierra Hydro-Tech testified to earlier this week were
36 derived from the USGS data, and discussions with PG&E and
37 that sort of thing over the years, the difference between
38 the high and low level of Silver Lake in the tables is 22.7
39 feet, and you said in this testimony just now 23.1, which
40 is a 1.6 foot difference.

41 I am not using this to try and discredit the
42 information, but people have relied upon these other
43 numbers and clarification is needed, not necessarily at
44 this instant.

1 A I can't address the EIR, but there is a number of
2 different elevations for the same storage. The USGS has
3 their datum that is sometimes reported. PG&E has their own
4 datum above mean sea level and then there's the actual
5 staff gage datum that we use to report all reservoir
6 elevations.

7 Q Okay. That's part of my testimony when we get down
8 to that. But that wasn't really what I was talking about
9 right now. I am just talking about the fact that using
10 PG&E datum, everybody using PG&E datum, Sierra Hydro-Tech
11 has said from zero to full is 22.7 and you just said it was
12 23.1. I am just asking that we get that resolved.

13 A 23.1 is the maximum water surface storage on the
14 lake.

15 MR. STUBCHAER: On which datum?

16 A On the staff gage.

17 MR. STUBCHAER: On the staff gage?

18 A Yes. I believe the EIR related that to the USGS
19 datum.

20 MR. STUBCHAER: So we need to check on the datum.

21 MR. CREGER: Yes, but that certainly needs to be
22 resolved because many people are and have presented data in
23 this hearing based on the other numbers.

24 MR. STUBCHAER: All right. Thank you, Mr. Creger.
25 Do you have any redirect, Mr. Moss?

26 MR. MOSS: No, sir.

27 MR. STUBCHAER: I am sorry, I forgot staff.

28 EXAMINATION

29 by MS. KATZ:

30 Q Mr. Lynch, this goes to questions 14 through 17 and
31 the answers in your testimony.

32 To your knowledge, will PG&E grant access to the
33 applicants to any or all of their four storage reservoirs,
34 to operate them to store water?

35 If you don't know, you can say so.

36 A I don't know.

37 Q Again, to your knowledge, will PG&E grant access to
38 the applicants to El Dorado Canal diversion works or to the
39 canal itself to operate it to divert water?

40 A That, I don't know either.

41 Q Again, the same question, to your knowledge, will
42 PG&E authorize the applicants to have any ability to
43 physically control the water?

44 A That, I don't know. That would be a matter of
45 future negotiation.

1 Q And do you know whether any negotiations will be
2 entered into in the future?

3 A I have heard of no plans.

4 MS. KATZ: Thank you.

5 MR. STUBCHAER: Anyone else?

6 EXAMINATION

7 by MR. LAVENDA:

8 Q Mr. Lynch, you responded to Mr. Gallery's questions
9 concerning inflow and projections for operation at Silver
10 Lake stating that you have three snow stations that you
11 monitor on a monthly basis in the watershed to Silver Lake.
12 Are there comparable monitoring stations in the watershed
13 of Caples and Aloha?

14 A There are none up in the wilderness area. We have
15 to draw correlations for that.

16 Q What about Caples?

17 A Yes, there is.

18 Q In response to the question concerning summer
19 inflows to Silver Lake, you stated that you had no
20 measuring devices.

21 A We have no measuring devices upstream of the
22 reservoir which could be used to determine the natural flow
23 conditions.

24 Q Inflow conditions.

25 A Inflow conditions. We have USGS and FERC mandated
26 stations that monitor the flow releases.

27 Q Okay. Is that true at all three lakes?

28 A That is true at all of our facilities.

29 Q You mentioned in your testimony, I believe at page
30 2, that there are certain inflows under your existing water
31 rights to the El Dorado Canal in addition to the Alder
32 Creek 15 cubic foot per second licensed direct diversion.

33 A (The witness nodded.)

34 Q Are there measuring devices on these inflows to the
35 El Dorado Canal to which you have rights?

36 A There is a measuring device on Alder Creek.

37 Q How about the other creeks downstream?

38 A Our ditch tenders turn in flow readings based on
39 estimates.

40 Q Are those flow readings available to Department of
41 Water Resources and in turn the general public?

42 A I believe they are.

43 Q Under the current agreement with El Dorado, you
44 supply about 15,080 acre-feet per year. How do you
45 determine the turnout of these amounts from your system?

1 A That is released at our El Dorado forebay. It has a
2 suppressed weir and digital recorder that reports the water
3 elevation every 15 minutes.

4 Q Are those recording values available to DWR and/or
5 the general public, or are those private information of
6 PG&E?

7 A We send EID a statement of the deliveries on
8 monthly basis. They could be obtained through El Dorado
9 Irrigation District as a public agency.

10 MR. LAVENDA: All right, thank you.

11 MR. STUBCHAER: Any redirect?

12 MR. MOSS: No.

13 MR. STUBCHAER: All right. Do you wish to --

14 MR. MOSS: I wish to offer into evidence the six
15 exhibits that I listed earlier, the map of the project
16 area, the El Dorado FERC License 184, the Chili Bar License
17 2155, the 1919 agreement, the written testimony which we
18 have labeled as 5-A, and Mr. Lynch's qualifications labeled
19 as 6.

20 MR. STUBCHAER: Are there any objections to the
21 acceptance of these exhibits?

22 Does staff agree with the numbers?

23 MS. KATZ: Yes.

24 MR. STUBCHAER: Hearing no objection, they will be
25 accepted.

26 Thank you, Mr. Moss.

27 Next is the testimony of the Sacramento Municipal
28 Utility District.

29 MR. O'BRIEN: Mr. Stubchaer, I have an additional
30 exhibit which I am going to pass out to staff and other
31 participants.

32 MR. STUBCHAER: Mr. O'Brien, let's discuss timing
33 procedure. Are you going to make an opening statement?

34 MR. O'BRIEN: No, I am pleased to advise we have
35 reached agreement with the applicants on some permit terms,
36 and my intention would be to put our evidence into the
37 record on a fairly summary basis and make my witnesses
38 available for cross-examination.

39 To the extent there is any, I think we would be able
40 to finish in ten minutes at most.

41 MR. STUBCHAER: All right. What is being distri-
42 buted is 13-A dated yesterday.

43 Are there copies for all parties?

44 MR. O'BRIEN: Yes. Just so the record is clear, Mr.
45 Stubchaer, that exhibit has been marked as 13-A. Yesterday

1 I circulated to staff an exhibit marked Exhibit 13, which
2 we later determined wasn't quite there in terms of an
3 agreement. It is my intention to offer 13-A into evidence
4 along with SMUD's Exhibits 1 through 12, but not to offer
5 13.

6 MR. STUBCHAER: All right.

7 MR. O'BRIEN: I will be gin with the examination of
8 John Hiltz and then Brian Jobson.

9 JOHN HILTZ,
10 having been sworn, testified as follows:

11 DIRECT EXAMINATION

12 by MR. O'BRIEN:

13 Q Mr. Hiltz, would you state your full name for the
14 record?

15 A John Hiltz, H-i-l-t-z.

16 Q And were you here to take the oath a couple of days
17 ago?

18 A Yes.

19 Q Is SMUD Exhibit 8 a true and correct copy of your
20 qualifications?

21 A Yes, it is.

22 Q And your current title at SMUD is Manager of
23 Generation Operations; is that correct?

24 A That's correct.

25 Q Is SMUD Exhibit 1 a true and correct copy of your
26 testimony offered in this proceeding?

27 A That's correct.

28 Q And is SMUD Exhibit 3 a true and correct summary of
29 your SMUD water rights for the upper American River
30 project?

31 A That's correct.

32 Q And is SMUD Exhibit 4 a true and correct copy of a
33 conformed set of the FERC License 2101 terms and
34 conditions?

35 A That is correct.

36 Q And SMUD Exhibits 6-A through D, are those graphs
37 that were prepared under your direction and control?

38 A That's correct.

39 Q And those graphs accurately depict SMUD's total
40 storage in the UARP for dry, average and wet years; is that
41 correct? You can expand on that, if you would like.

42 A I would say that they depict our operation and use
43 of that storage.

44 Q Okay. And Exhibit 7, was that also prepared under
45 your direction?

1 A That's correct.
2 Q And what does that depict?
3 A That just shows the storage in dry, average and wet
4 years on a monthly basis.
5 MR. O'BRIEN: Mr. Stubchaer, it is not intention to
6 have him summarize his written testimony unless you would
7 like him to do that.
8 MR. STUBCHAER: It is your choice .
9 MR. O'BRIEN: Okay.
10 BRIAN JOBSON,
11 having been sworn, testified as follows:
12 DIRECT EXAMINATION
13 by MR. O'BRIEN:
14 Q Mr. Jobson, could you please your full name for the
15 record.
16 A Brian Jobson, J-o-b-s-o-n.
17 Q You were also here when the oath was administered?
18 A Yes.
19 Q Is SMUD Exhibit 10 a true and correct copy of your
20 qualifications?
21 A Yes, it is.
22 Q And what is your current position with SMUD?
23 A Senior Power Contract Specialist.
24 Q Is SMUD Exhibit 9 a true and correct copy of your
25 testimony that you prepared for this proceeding?
26 A Yes, it is.
27 Q Are SMUD Exhibits 11 and 12 true and correct copies
28 of agreements and supplemental agreements between SMUD and
29 the County of El Dorado?
30 A Yes, they are.
31 Q And finally, is SMUD Exhibit 13-A a true and correct
32 copy of the terms and conditions under which SMUD would
33 withdraw its protest to these applications and petition?
34 A If the terms were adopted by the Board, yes, it is.
35 MR. O'BRIEN: Now, we have a couple of housekeeping
36 matters. I believe in Mr. Jobson's testimony there were a
37 couple of small modifications which I just wanted to
38 indicate for the record.
39 The first one appears on page 9, line 27, and that
40 is SMUD Exhibit 9.
41 Q Could you explain the change, Mr. Jobson?
42 A The change is to delete the word *hydro* on line 27.
43 MR. LAVENDA: What page?

1 A Page 9 of my testimony, delete the word *hydro*, so
2 that replacement costs system power with a similar
3 dependable capacity.

4 Q And also, on page 4, lines 19 and 25 of SMUD Exhibit
5 9, could you also explain those changes?

6 A The word *dependable* is deleted as the testimony is
7 trying to distinguish the instantaneous capacity and
8 dependable capacity, so in order to make that
9 differentiation clear, the word *dependable* is deleted from
10 the discussion of instantaneous capacity.

11 Q And finally, in Mr. Hiltz' testimony, which SMUD
12 Exhibit 1, on page 6, paragraph 1, the reference in this
13 paragraph is to SMUD Exhibits 6-A, 6-B and 6-C. It should
14 be to SMUD Exhibits 2-A, 2-B and 2-C, I believe. Is that
15 correct?

16 MR. HILTZ: A Exhibits 2-C, 2-B and 2-A
17 respectively.

18 Q Why don't we read that paragraph as it should read.

19 A The second to the last sentence in that paragraph of
20 SMUD Exhibit 2-C graphically depicts the changes in the
21 District's UARP water stage pattern for the dry years since
22 1990. SMUD Exhibits 2-B and 2-A do likewise for the
23 average and wet years respectively.

24 MR. O'BRIEN: With those changes, Mr. Stubchaer, I
25 would offer SMUD Exhibits 1 through 12 and 13-A.

26 I would also ask Mr. Somach if he would briefly
27 state the position of his client with respect to the
28 proposed permit terms.

29 MR. STUBCHAER: We will rule on the exhibits after
30 we see if there is any cross-examination.

31 MR. SOMACH: With respect to the proposed Exhibit
32 13-A, which is a proposed term or condition to be imposed
33 upon the permits, it is our understanding that if those are
34 included with any permit issued by the Board, that would
35 take care of and resolve the SMUD protest.

36 Is that correct?

37 MR. O'BRIEN: That is correct.

38 MR. SOMACH: Under those circumstances, we have
39 stipulated to the inclusion of this term in the permit
40 subject only to ratification by our respective boards.

41 We do, however, have some authority on their part
42 that indicates that there will be no problem with that. We
43 just simply need formal ratification before we have the
44 authority to actually go ahead and execute it.

1 What I would like to propose is just simply drafting
2 a letter to the Board as soon as the respective agency
3 boards have been able to meet to ratify our concurrence
4 here.

5 MR. STUBCHAER: We understand this can resolve
6 SMUD's protest, but I am reminded it doesn't bind the
7 Board.

8 MR. SOMACH: No. I understand that. In fact, my
9 understanding is that it only resolves SMUD's protest
10 assuming it is added to the permit.

11 MR. O'BRIEN: That is correct, and for the record,
12 that was why I went ahead and offered our evidence into the
13 record, but I understand this is not binding on the Board.

14 MR. STUBCHAER: All right. Mr. Jackson.

15 MR. JACKSON: Is the ratification of this particular
16 document according to law going to result in leaving open
17 the record for other evidence in that regard?

18 MR. STUBCHAER: The record will be held open to
19 receive the documents approving this exhibit and will be
20 circulated to all the parties, and you will be given an
21 opportunity to comment on it, if that is the question?

22 MR. JACKSON: That's most of my question.

23 I would assume then that -- the notice indicates
24 that we are to file our legal and factual briefs within 20
25 days from the close of the hearing. I would take it that
26 the 20 days would then begin when we are notified that the
27 hearing record is closed.

28 MR. STUBCHAER: Mr. O'Brien, how long do you think
29 it will take for the governing boards of SMUD to act on
30 this exhibit?

31 MR. O'BRIEN: I will direct that to Mr. Jobson. It
32 is kind of hard to tell.

33 MR. JOBSON: I think that could be accomplished
34 within 30 days.

35 MR. STUBCHAER: All right. We will give the
36 additional time to comment, and closing arguments after the
37 receipt of that.

38 MR. JACKSON: And the parties will all be notified
39 of that?

40 MR. STUBCHAER: Yes.

41 MR. GALLERY: Mr. Stubchaer, with regard to the time
42 period that Mr. Jackson just mentioned, about filing
43 closing briefs and comments, do I understand the time
44 period begins to run from the close of the hearing? The

1 reason I ask that is I find it sometimes important or very
2 helpful to go back and check the transcript of the hearing.

3 MR. STUBCHAER: The date will run from the date
4 that final document from SMUD approving this 13-A are
5 circulated to the parties which will give an additional
6 time.

7 MR. GALLERY: Yes, but then, the question is, will
8 the Board have a copy of the transcript at that time so
9 that if any parties should want to check the transcript in
10 finalizing their written arguments, it is sometimes
11 helpful. It would be important at the time that we have to
12 do any closing arguments not start earlier than the time
13 the transcript is available.

14 MR. STUBCHAER: I see your point.

15 MS. KATZ: I would also ask if you intent to rely
16 heavily on the transcript, you order your own copy.

17 MR. GALLERY: I would submit on behalf of my client,
18 we couldn't probably afford to order our own copy and would
19 probably want to examine what the Board has on file. Our
20 own copy at Alice's price would be too expensive.

21 MR. STUBCHAER: That raises an interesting point
22 because we said at the beginning of the hearing that
23 parties make their own arrangements with the court reporter
24 to get copies of the transcript.

25 MS. KATZ: That is true, and under the terms of the
26 contract with El Dorado, we have an expedited process here
27 and the staff will be relying on the transcript and have
28 first call on its use, so that is why I suggest that
29 whether it is Mr. Gallery or anyone else, if they are going
30 to be relying on the transcript, they are going to have to
31 order their own copy or make provisions with someone to be
32 borrowing copies.

33 MR. GALLERY: I would want the Board to understand
34 that's easy to suggest, but it can be very expensive. If
35 there is any way around that, we would try to avoid it.

36 MR. STUBCHAER: All right, who wishes to cross-
37 examine Sacramento Municipal Utility District, and staff,
38 if you want to examine, raise your hands.

39 Mr. Moss, Mr. Jackson and Mr. Creger. All right.

40 CROSS-EXAMINATION

41 by MR. MOSS:

42 Q Mr. Hiltz, as far as you are aware, does SMUD intend
43 to file this proposed agreement or permit term actually
44 with the Federal Energy Regulatory Commission and to

1 otherwise seek either their approval or amendment of SMUD's
2 license, project license to include this?

3 MR. HILTZ: A Not to my knowledge.

4 Q Does SMUD take the position is it not necessary to
5 secure an amendment or approval from FERC?

6 MR. O'BRIEN: That calls for a legal conclusion. I
7 object.

8 MR. STUBCHAER: If he can't answer, he can say he
9 can't answer.

10 A I can't answer that.

11 Q Are you aware that some of the water rights that may
12 be involved in the SMUD facilities that are mentioned in
13 this proposed term are currently held between SMUD and
14 PG&E?

15 A No, I am not.

16 MR. MOSS: I will just simply say that we will have
17 discussions with SMUD about the consent of PG&E to the
18 extent that we have joint water rights for the Slab Creek
19 Reservoir.

20 Q Is it the intent of the parties to this agreement
21 that the applicants will store water in Slab Creek
22 Reservoir?

23 MR. O'BRIEN: I am going to object to the extent it
24 asks for testimony as to the intent of the Board of
25 Directors of SMUD. I think that is an improper question.

26 MR. STUBCHAER: Could you rephrase the question?

27 MR. MOSS: Q On the face of it, it says permittees
28 shall receive at Slab Creek Reservoir under their permitted
29 water rights. Do you interpret that to mean that they will
30 store water at Slab Creek Reservoir?

31 A I think it is our intention that they will supply
32 water as they take it out or within a reasonable time
33 frame. I do not think that would involve storage.
34 Storage, I believe, is interpreted to be in excess of the
35 time period we are talking about.

36 Q Is it your understanding that the diversions from
37 the White Rock penstock, even as permitted under this
38 proposed term, will still affect the generation of
39 electricity or capacity?

40 A That's correct.

41 MR. JOBSON: I would like to clarify that. Whether
42 it is capacity or energy depends on how the terms are
43 worked out. Capacity, in fact, may be avoided. There will
44 likely be very little impact if the water is diverted, but
45 capacity is less certain.

1 As I read this proposed term, it is by and large a
2 series of agreements to agree. Would you agree with that
3 characterization?

4 MR. JOBSON: A Yes.

5 Q And what would happen if, in fact, the parties are
6 unable to agree?

7 A I am not going to speculate what would happen in the
8 future, but I will speak for SMUD, it is our understanding
9 that agreement will be imminent and is imminent, and can be
10 reached under reasonable terms acceptable to both parties.

11 Q Well, because PG&E, in essence, objects to the Board
12 utilizing such a term which is basically an unenforceable
13 agreement to agree.

14 MR. STUBCHAER: Your objection is noted and will be
15 considered in weighing the evidence.

16 Mr. Jackson, how long will you take?

17 MR. JACKSON: Not very long.

18 MR. STUBCHAER: I thought what we would do is break
19 for lunch now and resume the cross-examination after lunch.
20 And we will reconvene at 1:10 p.m.

21 (Noon recess)

22

23

24

25

26

27 WEDNESDAY, JUNE 16, 1993, 1:10 P.M.

28 --o0o--

29 MR. STUBCHAER: We will come back to order and
30 resume the El Dorado water rights hearing.

31 The Sacramento Municipal Utility District is being
32 cross-examined.

33 The next examiner is Mr. Creger.

34 CROSS-EXAMINATION

35 by MR. CREGER:

36 Q You gentlemen heard my questions of PG&E. Can you
37 answer the same basic thing with respect to your facility?
38 The powerhouse is used for peaking power or baseline power?

39 MR. HILTZ: A It's, first of all, used for
40 regulation and water that we have in excess for regulation
41 on a two-year basis is used for peaking.

42 MR. O'BRIEN: Excuse me, we are talking about Slab
43 Creek Reservoir?

44 MR. CREGER: Yes.

1 Q That comes out of White Rock powerhouse, power
2 generated by White Rock?

3 A Correct.

4 Q You are going to lose the water feeding that power
5 plant. Could you expand upon regulation? I am not that
6 familiar with it.

7 A In meeting the minute-by-minute, second-by-second
8 load changes, we have to have facilities on line ready as
9 you turn on your air conditions to pick up that additional
10 load, and that is regulation.

11 Q What does it mean to essentially be paid for power
12 foregone, and one question in that regard is, are the
13 dollars paid for power foregone equal to, less than, or
14 greater than the power you would have generated the revenue
15 from?

16 MR. JOBSON: A I think I can answer your question.
17 Power foregone means power that would have been generated
18 had not a certain event taken place, for example,
19 diversion.

20 Q And then, to receive payments for that, are those
21 payments greater than, equal to or less than the money you
22 would have gotten from the power had you generated it, in
23 general terms?

24 A We generate the power to meet loads, not to derive
25 direct revenue. So. the concept is that the payment would
26 be our replacement cost; in other words, the cost of what
27 we would have to do to go out and build replacement power
28 to replace the power which was foregone.

29 Q But if p[power is foregone, that still doesn't stop
30 the user from turning on the switch.

31 A Which is why we have to get replacement power so he
32 will have power when he turns on his switch.

33 Q So, in theory, the dollars that come in for power
34 foregone go out to buy the power to replace it?

35 A We will have to incur costs to replace that power.
36 Those plants were constructed quite a long time ago and as
37 I said, there isn't a dollar stream coming out of those
38 plants, there is electricity coming out of the plants and
39 we will go replace that electricity at our marginal cost;
40 in other words, our cost of going out and getting that
41 power and bringing it to load to serve the load that would
42 have been served had we not foregone this other power.

43 I cannot tell you the dollars for this power
44 generated are the same because, like I say, power is
45 generated, not money.

1 Q I wasn't leading up to whether it was a money-making
2 operation or not, but --

3 A I hope I have answered your question.

4 Q So, in doing this, the power again, if you use it
5 for regulation, the need to regulate is now. The people
6 turn on the switches and they need to do that now.

7 Do you have sources for achieving that same support?
8 How does that get set up or preprogrammed, or what have
9 you?

10 We are talking about a case where we know the water
11 is going to be used for consumptive purposes; how do you
12 preprogram all the rest of the support necessary to handle
13 the power needs?

14 A We would have to have replacement power arranged
15 prior to the time the diversion was made so it would be
16 there ready to meet the purposes that the generation
17 previously met and there is enough notice requirement and
18 such that we will be in a position to do that.

19 Q Does that come from within the SMUD system or
20 external?

21 A The power that would replace that power which would
22 have been generated?

23 Q Yes.

24 A We would have to have similar capability, i.e.,
25 peaking and regulation in order to meet the same
26 requirements that were met previously.

27 Q Where does that power exist? It's got to come from
28 somewhere?

29 A Currently we are replacing the power that was
30 generated by Rancho Seco, which has been supplied by
31 contract in the interim. And we would have to acquire an
32 additional amount of power, and we are continuing to
33 acquire power over time to meet increased loads so this
34 would just place another increment of replacement power in
35 our acquisition program, and the cost for doing that, I
36 can't give you.

37 We have a resource acquisition strategy that has
38 been published to acquire power and it doesn't identify
39 where each kilowatt comes from. All the resources are
40 integrated to meet load, and this would just be another
41 resource that had to be brought on line to meet load, so I
42 can't give you a specific answer.

43 Q Okay. Do you think the power foregone here is going
44 to require new facilities from wherever the sources are,
45 wherever you would get this power from?

1 Q Where do you lose the hydro generation, at what
2 facilities?

3 A At our White Rock facility.

4 Q Does your White Rock facility provide water to the
5 Chili Bar facility of PG&E below?

6 A That's correct.

7 Q So, when water is diverted from White Rock for
8 consumptive use, it not only affects your hydroelectric
9 generation, but PG&E's Chili Bar electric generation?

10 A There will be less water going to Chili Bar.

11 Q What is your FERC license number?

12 A 2101.

13 Q License 2101, does it have any authorization to
14 divert water at White Rock for consumptive use?

15 A No, it doesn't speak to that.

16 Q You physically are going to be handling the
17 diversion of water; aren't you?

18 MR. JOBSON: A It is not resolved at this point,
19 but there will be an operating agreement between El Dorado
20 and SMUD that insures that that will be handled in a safe
21 and reliable manner.

22 Q So, you will be signing a contract to allow a
23 consumptive use your facility for a purpose not in your
24 FERC license; is that correct?

25 A Let me clarify. I don't think it is quite clear.
26 We have signed agreements in 1957 and 1961 that contemplate
27 use of our facilities. There is correspondence in the
28 records that indicate FERC was well aware of that at the
29 time, and in the proceedings there was discussion and the
30 parties were all aware that was the case.

31 Does that clarify it?

32 Q Well, if I can go a step further, there was
33 discussion, but there is no condition in your FERC license
34 that allows you to divert water for consumptive use; is
35 there?

36 A I am not aware of one.

37 Q And you propose to allow somebody to use your
38 facility to divert the water for consumptive use; right?

39 A I cited we have executed contracts in the past that
40 contemplate that in return to the other obligations on the
41 part of the parties.

42 Q Are those contracts in the past a part of your FERC
43 license?

44 A I do not believe so.

1 Q Now, how much water that is presently in your White
2 Rock facility that is used for hydroelectric generation
3 will be foregone for that purpose as a result of this
4 proposed agreement?

5 A The diversions at El Dorado is proposing are from
6 water that presently comes down the South Fork and flows
7 into Slab Creek Reservoir.

8 Q What percentage will go now for consumptive use
9 instead of hydro generation?

10 A I couldn't give you a percentage. The rights that
11 El Dorado has applied for, as I understand them, are rights
12 to water which presently flows down the river and flows
13 into Slab Creek Reservoir, and is either diverted through
14 the fish watt release or diverted through the White Rock
15 penstock, or goes over the spillway occasionally.

16 Q What changes in operation will diverting to
17 consumptive use cause for SMUD's project at White Rock?

18 A Well, until we have the terms, and the hours, and
19 the amounts, and the quantities committed to, we can't give
20 you a specific answer as to exactly what changes in
21 operation are anticipated.

22 Q If you cannot tell me what changes in operation are
23 going to take place, how do we know what effects there will
24 be on the environment in the area of Slab Creek Reservoir?

25 A I guess I don't claim to know what effects there
26 will be on the environment.

27 Q Have you done any environmental documentation either
28 for FERC under the NEPA procedure, or for the Board under
29 the CEQA procedure to determine what environmental effects
30 will be caused by the change in operation of changing from
31 power generation to consumptive use?

32 MR. HILTZ: A You are speaking of above the dams in
33 Slab Creek?

34 Q Yes.

35 A We have done none as has been testified to here by
36 others. The change in elevation due to the daily flows
37 based on EID's testimony would be less than a foot,
38 possibly less than six inches.

39 Our normal operating fluctuations vary from six to
40 ten feet under reservoir operations, so this is well within
41 the normal operation.

42 Q It is well within the normal operation, but how
43 about the frequency of the changes? Will they be more
44 frequent than they presently are because of the consumptive
45 water being taken out?

1 A Our operations would change within those limits on a
2 daily basis.

3 Q So the frequency changes then will be daily?

4 A They would be screened by our changes. You couldn't
5 tell the difference.

6 Q How do you know that, sir? What document are you
7 referring to to provide you the basis for that opinion?

8 A Just my operating knowledge of that particular
9 reservoir.

10 Q But there have been no studies done?

11 A We do provide actual operating elevations of that
12 reservoir on a daily basis.

13 MR. O'BRIEN: I would like to state for the record
14 SMUD will, in effect, with the negotiation and execution of
15 any operating agreement, conduct any and all environmental
16 reviews that is required either under CEQA or NEPA.

17 MR. JACKSON: And you will provide that, I take it,
18 on a time frame that will allow it to be in front of the
19 Board?

20 MR. O'BRIEN: We will provide that as required by
21 those laws.

22 MR. JACKSON: Q Calling your attention to the
23 diversion of water between White Rock and Chili Bar, as the
24 water is taken off for consumptive use, would you expect
25 that there will be an effect on the white water rafting
26 caused by the water being diverted out of the stream?

27 MR. JOBSON: A That is not a subject of my
28 testimony and I can't comment on it.

29 Q Is there any one here who knows what that will do to
30 the white water rafting in the Lotus reach with less water
31 reaching Chili Bar?

32 MR. HILTZ: A We have not looked at that.

33 Q You are aware that PG&E can only release water from
34 Chili Bar that they receive from White Rock; are you not?

35 A That's correct.

36 Q So, removal of the water at White Rock, even with
37 SMUD's agreement, you have indicated affects Chili Bar
38 power generation, so it is fair to say that it also affects
39 the nature and duration of the flows below Chili Bar?

40 MR. O'BRIEN: Asked and answered. The witnesses
41 have indicated they have no opinion on this issue.

42 MR. JACKSON: No opinion because they don't know
43 what happens?

44 MR. O'BRIEN: Because they have not studied it.

1 MR. JACKSON: Q You have not studied the effects on
2 white water rafting?

3 A No.

4 Q Does SMUD intend to apply for an amendment of their
5 FERC license as a result of this agreement?

6 MR. O'BRIEN: Which agreement are you referring to?

7 MR. JACKSON: The proposed permit condition and any
8 agreement in support of it.

9 MR. JOBSON: A This is not an agreement as it is
10 proposed. It contemplates further agreement. If a FERC
11 amendment is required, we will apply for it, but we have
12 not made a determination at this point if one will be
13 required or not.

14 Q And, therefore, because you don't know whether or
15 not you need an amendment from FERC or will apply for an
16 amendment, you don't know what environmental reviews you
17 will do about effects, both on hydro generation below you
18 and white water rafting below you?

19 A We will do those required by law.

20 MR. JACKSON: Mr. Stubchaer, I would ask that the
21 hearing be left open for the environmental reviews if they
22 are, in fact, necessary, because until we have the
23 operational criteria of any agreement that is proposed,
24 there is clearly no way to determine whether or not the
25 Board or the Federal Government has completed its
26 environmental review requirements.

27 MR. SOMACH: Mr. Stubchaer, if I might be heard on
28 this issue, we believe that in the context of this hearing
29 and in the context of what is being proposed, there has
30 been probation report environmental review that has been
31 conducted. In fact, in the EIR that has been submitted to
32 this Board is that the impacts of the reoperation, or the
33 type of operation that is being contemplated is exactly
34 what was being analyzed in that environmental document, and
35 as part of that, whether or not Mr. Jackson likes it, we
36 did determine that there would be a significant impact upon
37 rafting downstream. That's on record.

38 I guess you could focus questions to SMUD on whether
39 or not we are contemplating doing anything other than what
40 was discussed in terms of operations in the existing
41 environmental documents which have been submitted here
42 today, or yesterday or the day before.

43 MR. JACKSON: Mr. Stubchaer, there is a substantial
44 difference in the two duties of the two agencies. The El
45 Dorado County Water Agency essentially did make a finding

1 there would be a significant adverse impact on white water
2 rafting by this project. They then did a statement of
3 overriding considerations. That is their right.

4 That is not the same as SMUD's duties under both
5 Federal and State environmental laws. They have not made a
6 finding of overriding consideration and, in fact, they have
7 prepared no documents that would enable them to do that.

8 Consequently, the statement of overriding
9 consideration does not cover SMUD's part of this agreement.

10 MR. STUBCHAER: It is my understanding that only
11 one environmental document is required for a project, and
12 must be prepared by the lead agency.

13 MR. SOMACH: Moreover, it is inaccurate to say that
14 there was a finding of overriding consideration. Those are
15 also exhibits. If one reviews those, they will find that
16 is not the way the District and the County handled that
17 issue, but that instead, there was proposed mitigation to
18 reduce the level of impact to insignificant. There may be
19 disagreement as to whether or not the reduction is
20 significant or insignificant, but yet the analysis was
21 conducted as part of the CEQA document, and it can be
22 adopted by any agency in support of the actions they might
23 take, assuming, of course, that it is even relevant to
24 their actions.

25 MR. STUBCHAER: Mr. Jackson, we will not hold the
26 hearing record open to receive the information that you
27 requested.

28 MR. JACKSON: You will not?

29 MR. STUBCHAER: We will not.

30 MR. JACKSON: Thank you. I have no further
31 questions.

32 MR. STUBCHAER: Does staff have any questions of
33 SMUD?

34 MR. FALKENSTEIN: Mr. Jackson answered my question.

35 MR. STUBCHAER: Do you have any redirect?

36 MR. O'BRIEN: No.

37 MR. STUBCHAER: Do you wish to offer the exhibits?

38 MR. O'BRIEN: Yes, Mr. Stubchaer. I would like to
39 reoffer SMUD Exhibits 1, 2-A, B and C, 3, 4, 5, 6-A, B, C
40 and D, 7, 8, 9, 10, 11, 12 and 13-A.

41 MR. STUBCHAER: Does staff agree with those numbers?

42 MS. KATZ: Yes.

43 MR. STUBCHAER: Any objection to receiving these
44 exhibits? If not, they are received into evidence.

45 Does that conclude your case?

1 MR. O'BRIEN: Yes, thank you.

2 MR. STUBCHAER: U. S. Bureau of Reclamation, Mr.
3 Turner.

4 MR. TURNER: Good afternoon, Mr. Stubchaer. I am
5 Jim Turner, Assistant Regional Solicitor in the Pacific
6 Southwest Region for the Department of the Interior. I am
7 representing the U. S. Bureau of Reclamation.

8 I would just like to make a quick opening statement,
9 if I might.

10 As you know, the Bureau of Reclamation operates the
11 Central Valley Project which includes Folsom Dam and
12 Reservoir, and a number of dams and reservoirs on the South
13 Fork of the American River.

14 I will be calling three witnesses today. Mr. John
15 Renning, the first witness, will be advising you of the
16 manner in which the permitted request by the applicants
17 will interview with the implementation of Reclamation's
18 water rights permits for the operation of Folsom and Nimbus
19 Dam and Reservoirs to achieve the purposes for which they
20 were operated.

21 My third witness is Ms. Kay Moore, who will advise
22 you of the items which must be addressed in a contract
23 between the applicants and Reclamation to permit the
24 applicants to use Sly Park Reservoir and/or Folsom
25 Reservoir for the storage and/or conveyance of water for
26 which they are seeking permits.

27 Essentially, the applicants are seeking water rights
28 permits which will allow them to do two things:

29 First of all, the permits will allow them to divert
30 and make consumptive use of American River water that would
31 otherwise be available to Reclamation for Reclamation in
32 Folsom Reservoir.

33 Secondly, the written testimony and the oral
34 testimony that was presented earlier by the applicants
35 indicates that they intend to use Sly Park Reservoir and
36 Folsom Reservoir to either store and/or divert the American
37 River water.

38 However, as has been pointed out in the previous
39 testimony and cross-examination, the precise details of the
40 manner in which they intend to use those facilities has not
41 yet been presented in any great detail.

42 The applicants are asserting that the watershed of
43 origin provisions of California law entitles them to divert
44 and make consumptive use of water from the American River
45 even if those diversions and the use reduce the amount of

1 American River water available to Reclamation for storage
2 and diversion from Folsom Reservoir pursuant to the water
3 rights permits of the United States.

4 That argument may have some merit if Folsom
5 Reservoir was operated exclusively for the purpose of
6 exporting water from the American River watershed.
7 However, that is not the case. Folsom Dam and Reservoir
8 are operated primarily to make water available to water
9 users within the American River watershed, to provide
10 downstream flows sufficient to protect fish and wildlife
11 resources and habitat in the lower American and to provide
12 water necessary to achieve and maintain the applicable
13 Delta water quality standards.

14 As you are undoubtedly aware, in light of a
15 reasonable and prudent alternative that is contained within
16 the biological opinion that was issued by the National
17 Marine Fisheries Service in connection with the winter run
18 chinook salmon, Reclamation is going to be required, and is
19 now required to rely more heavily on releases from Folsom
20 Reservoir to achieve and maintain the Delta standards than
21 they have been in the past.

22 Furthermore, under Federal Reclamation laws,
23 specifically the Warren Act of February 21, 1911, and as
24 supplemented by Section 305 of the Reclamation law and the
25 State's Emergency Drought Relief Act of 1991, the
26 applicants are entitled to utilize Sly Park Reservoir or
27 Folsom Reservoir only if they enter into a contract with
28 the United States pursuant to those statutes, and such a
29 contract has not as yet been negotiated between the
30 applicants and Reclamation.

31 As I previously mentioned, since at this point those
32 negotiations haven't begun and the testimony and exhibits
33 do not clearly indicated precisely how and when those
34 reservoirs are going to be used, it has been very difficult
35 for the Bureau witnesses to fully analyze and identify the
36 precise impacts that this proposed project will have on the
37 Central Valley Project.

38 The final thing I would just like to point out for
39 your attention, Mr. Stubchaer, is that the matters that we
40 are going to be discussing today are of great importance to
41 the Bureau of Reclamation because we feel that there is a
42 very very good possibility that in this type of project
43 these types of permits are, in fact, made available to
44 these applicants, that it is highly possible that we will
45 be seeing numerous other very similar applications filed in

1 connection with other power reservoirs throughout the State
2 adding consumptive use and integration of those uses in
3 those projects as well, which can have a significant impact
4 statewide on the operations of various existing storage
5 projects that have been relying on water supplies from the
6 power reservoirs in the past, not just the Central Valley
7 Project, not just the Reclamation reservoirs, but private
8 projects as well.

9 So, we have attempted to present to you the
10 information we can in the best detail possible, so that you
11 can give this reasonable evaluation, and we would certainly
12 intend to present a brief to you after the close of this
13 hearing identifying the legal issues that we think are
14 critical to appropriately resolve this matter and other
15 similar matters that we anticipate may be coming up in the
16 very near future.

17 So, with that, I would like to now go ahead and --

18 MR. STUBCHAER: I would like to ask you a question
19 on the Warren Act. You referred to the original Warren act
20 of 1911.

21 MR. TURNER: Yes.

22 MR. STUBCHAER: Was that recently amended to permit
23 use of Bureau facilities by non-projects for municipal and
24 industrial water that wasn't permitted under the original
25 act?

26 MR. TURNER: That's very close. As I mentioned in
27 my presentation, we had the original Warren Act which
28 authorized the Secretary to allow holders of non-project
29 water rights to utilize the excess capacity of the
30 Reclamation facilities for the conveyance of storage of
31 water for irrigation purposes only.

32 Then, as I mentioned, in Section 305 of the State's
33 Emergency Drought Relief Act of 1991, the Warren Act was
34 not technically amended. As I mentioned, it was
35 supplemented where in that statute the Secretary was
36 authorized to implement the Warren Act to permit the
37 storage and conveyance of non-project water for municipal
38 and industrial, fish and wildlife purposes in addition to
39 the irrigation purposes.

40 MR. STUBCHAER: Is that indefinite permission for
41 the Secretary to do that?

42 MR. TURNER: Yes, Section 305 is not one of the
43 terms that was going to expire in two years, so that was a
44 longer term supplement of the Warren Act, to expand the
45 purposes for which the water could be stored and conveyed.

1 So, I would now like to begin by calling my first
2 witness, John Renning.

3 JOHN A. RENNING,
4 having been sworn, testified as follows:

5 DIRECT EXAMINATION

6 by MR. TURNER:

7 Q Mr. Renning, would you state your full name for the
8 record and spell your last name.

9 A My name is John A. Renning, R-e-n-n-i-n-g.

10 Q And by whom are you employed?

11 A By the U. S. Bureau of Reclamation.

12 Q And what is your current position?

13 A Hydraulic Engineer in the Central Valley Project
14 Operations.

15 Q And what are your primary job responsibilities?

16 A My primary job responsibilities now are studies of
17 project operations concerning Endangered Species Act, the
18 Central Valley Project Improvement Act, and other matters
19 related to long-term Central Valley Project operations.

20 Q Prior to assuming your current position, you have
21 been dealing with Bureau of Reclamation Central Valley
22 Project water right matters for a number of years; have you
23 not?

24 A Yes, that is right. I recently transferred to
25 Operations, just a few weeks ago.

26 Q Now, Mr. Renning, you took the oath yesterday; did
27 you not?

28 A Yes, I took it on Monday.

29 Q Could you please summarize your written testimony?

30 A My testimony concerns the water rights of the United
31 States at Folsom Dam and Reservoir. I would note that I
32 have made an addition to my written testimony and I have
33 copies here if people want them.

34 I neglected to include one right that we have at
35 Folsom Reservoir in the testimony that was originally filed
36 with the Board. This is Application 14662 for power at
37 Folsom and Nimbus Dams.

38 Q If I could just interrupt you. We do have
39 additional copies of the revised written copies available
40 and if you like, we could distribute those at this time.

41 I apologize for interrupting the testimony, but I
42 also note that we did not identify the written testimony
43 with a specific exhibit number. Do we want to do that now?

44 MR. STUBCHAER: Has staff assigned a number?

45 MS. KATZ: No, we haven't.

1 MR. TURNER: I would suggest we do have three
2 documents that have been submitted and identified as USBR
3 Exhibits 1, 2 and 3, so I might suggest we would just
4 identify Mr. Renning's written testimony, maybe the
5 original version as Exhibit 4, and the new one we are
6 distributing today with the one addition, as 4-A, and then
7 we could identify the written testimony of Jeff Sandberg as
8 Exhibit 5, and the testimony of Ms. Kay Moore as Exhibit 6,
9 and I will present to the Board staff copies of what would
10 now be designated as 4-A.

11 And to just restate what Mr. Renning said earlier,
12 the only change between Exhibit 4 and Exhibit 4-A is on the
13 very first page. You will note there is a listing of
14 applications and permits, and the original version of
15 written testimony identified for applications and permits,
16 and it now contains and identifies five in light of the
17 addition of the fourth application and permit in the list.

18 Q Sorry to interrupt you, Mr. Renning. Could you
19 continue with your summary.

20 A Certainly. I will briefly summarize my written
21 testimony.

22 I would like to highlight Application 5681. This
23 was a water right that was originally issued to the PG&E
24 Company and this concerned releases from the reservoirs in
25 question in this hearing, at issue in this hearing, Medley,
26 Twin, Silver and Echo Lakes, for generation of power at the
27 old Folsom site.

28 When the United States constructed Folsom Dam in the
29 1950s, these facilities were purchased by the United States
30 and that right for power generation at that site was
31 acquired by the United States.

32 To the extent that the El Dorado project would
33 divert water released from Echo, Medley, Twin and Silver
34 Lakes that would otherwise flow into Folsom Lake, this will
35 be an adverse impact to Reclamation's water rights at
36 Folsom Lake.

37 I would like to note that various decisions of the
38 State Water Rights Board and the State Water Resources
39 Control Board have defined when inappropriate water is
40 available in the American River watershed and in the Delta
41 watershed.

42 Term 91, as developed as a result of Decision 1594,
43 defines when unappropriated water is unavailable as the
44 result of the Central Valley Project and the State Water
45 Project operating to meet Delta requirements.

1 Generally, as a result of these decisions,
2 inappropriate water is not available in the American River
3 from about June to September of most years.

4 Granting the applications of El Dorado County Water
5 Agency/El Dorado Irrigation District for water rights at
6 Echo, Medley, Twin and Silver Lakes, would adverse affect
7 the implementation of the water rights identified above as
8 well as the operations of the Central Valley Project. And
9 these impacts are going to be discussed by Mr. Sandberg.

10 That concludes my testimony.

11 MR. TURNER: Thank you, Mr. Renning.

12 I would now like to call Mr. Jeffery Sandberg.

13 JEFFERY SANDBERG,

14 having been sworn, testified as follows:

15 DIRECT EXAMINATION

16 by MR. TURNER:

17 Q Mr. Sandberg, you were sworn on Monday as well, were
18 you not?

19 A That's correct.

20 Q Could you please present your full name for the
21 record and spell your last name.

22 A My name is Jeffery Sandberg, S-a-n-d-b-e-r-g.

23 Q And by whom are you employed?

24 A I am employed by the Central Valley Project
25 Operations Coordination.

26 Q With the Bureau of Reclamation?

27 A Bureau of Reclamation.

28 Q What are your primary job responsibilities in that
29 position?

30 A My primary responsibilities are analysis of ESA, the
31 Endangered Species Act, and also, implementation of the
32 Central Valley Project Improvement Act, and the impacts of
33 long-term operations on the Central Valley Project.

34 Q Would you please summarize your written testimony?

35 A Yes. My testimony is on the impact of the El Dorado
36 project on the operations of the Central Valley Project.

37 Fundamentally, the El Dorado project would deprive
38 Folsom Reservoir of approximately 17,000 acre-feet each
39 year of inflow. A large part of this 17,000 acre-feet
40 impacts would occur during the months of June through
41 September when the applicant would be rediverting water
42 released from PG&E storage.

43 Lower inflows to Folsom Reservoir during the months
44 of June through September have an adverse impact on the
45 capability of the Central Valley Project to provide for (1)

1 in-basin needs on the lower American River; (2) for the
2 export of water from the Delta; and (3) to meet Delta
3 outflow and applicable water quality standards in the
4 Delta.

5 It also complicates matters with the integrated
6 operation of the Central Valley Project on a number of
7 issues, including (1) cold water storage at Shasta
8 Reservoir. Folsom Reservoir serves as a main source of
9 water for the in-basin needs on the American River. These
10 in-basin needs include instream flows in the lower American
11 River. They include service from diverters in the lake
12 which El Dorado Irrigation District is also one, and Folsom
13 also serves as a main reregulating reservoir for the City
14 of Sacramento's water supply.

15 Folsom Reservoir, being the bottom reservoir on the
16 system, is also responsible for the instream flows on the
17 American River. Currently Reclamation is required to meet
18 higher flows than the mean flow. We typically refer to
19 that as a modified 1400-type of operation.

20 There have been many suggestions in the past,
21 including the Bay-Delta hearings, that these standards
22 could possibly be raised in the future.

23 In addition, the Central Valley Project Improvement
24 Act has dedicated a new criteria to the Central Valley
25 Project and we are mandated to dedicate 800,000 acre-feet
26 of yield for fish and wildlife purposes. We have some
27 correspondence with the Fish and Wildlife Service, who is
28 the lead agency in the management of that water, that a
29 high priority will be on the American River.

30 Also, currently going on are some flood control
31 reoperation studies for Folsom Reservoir. This is being
32 done concurrently with PL 101-96.

33 Also, concurrently there is a study going on by the
34 Sacramento Area Flood Control Agency. Both these studies
35 are examining operational changes potentially at Folsom
36 Reservoir. And both these studies have the potential to
37 change the operation rules at Folsom.

38 One other important fact of the operation of Folsom
39 Reservoir is that the Central Valley Project is operated in
40 an integrated manner which means that Folsom Reservoir is
41 not always operated as a single unit. It is operated in
42 conjunction with Shasta and Clair Engle to meet Delta
43 standards, along with and in coordination with the State
44 Water Project.

1 This has implications on many aspects of how the
2 Central Valley Project is operated. Folsom Reservoir, of
3 course, is an integral part of this overall system. The El
4 Dorado project, inasmuch as it reduces inflow to Folsom
5 Reservoir, would have an impact on the capability of Folsom
6 in this integrated system to meet many of the needs of the
7 overall Central Valley Project.

8 One example that I can give is that during the past
9 drought period one of the operations the Central Valley
10 Project did attempt to do was to use Folsom Reservoir
11 earlier in the summer season, principally during the late
12 spring and early summer to meet high Delta demands in order
13 to conserve water at Shasta, to conserve the cold water
14 storage at that reservoir for endangered species protection
15 of the winter run chinook salmon.

16 As has been mentioned before, the State Water
17 Resources Control Board also administers Term 91, where in
18 brief, the Central Valley Project/State Water Project
19 system is releasing a greater amount of water than is being
20 exported by the two projects, and in-basin uses are using
21 more than all the inflow to the Central Valley Project and
22 State Water Project system.

23 Q When this condition exists, the Central Valley
24 Project/State Water Project system is releasing inflow for
25 in-basin needs and meeting more than Central Valley
26 Project/State Water Project export demands with storage
27 releases.

28 The El Dorado project would decrease the inflow to
29 Folsom Reservoir during these periods and, therefore,
30 exacerbate the condition.

31 And that completes my testimony.

32 Q Now, Mr. Sandberg, would you just very quickly
33 summarize Exhibits 1, 2 and 3, what they contain. I know
34 you fully described them in your written testimony, but
35 just for the Board, would you quickly summarize what they
36 are pointing out.

37 A Exhibit 1 is an example, hypothetical example, of
38 the potential impact of the El Dorado project on storage of
39 Folsom Reservoir during the historical period 1990-92.

40 Exhibit 2 is a letter from Fish and Wildlife to
41 Reclamation back, I believe, in February, explaining what
42 some of the primary purposes envisioned for the 8000,000
43 acre-feet of yield described in the Central Valley Project
44 Improvement Act would be.

1 And Exhibit 3 is a tabular description of the period
2 of when Term 91 has been in effect since, I believe, 1984
3 to 1992.

4 MR. TURNER: Thank you very much, Mr. Sandberg.
5 I would now like to call Kay Moore.

6 KAY MOORE,
7 having been sworn, testified as follows:

8 DIRECT EXAMINATION

9 by MR. TURNER:

10 Q Ms. Moore, would you please present your full name
11 for the record and spell your last name.

12 A My name is Kay, K-a-y, Moore, M-o-o-r-e.

13 Q And by whom are you employed?

14 A I am employed by the Bureau of Reclamation.

15 Q What is your current position?

16 A I am in Contracts and Repayments.

17 Q And what are your primary job responsibilities?

18 A My primary responsibility is the contracting
19 process. I would be responsible for taking a contract from
20 the beginning of contract negotiations through completion
21 of the contracting process.

22 Q Ms. Moore, would you please summarize your written
23 testimony.

24 A My testimony that was presented was very brief. It
25 spoke to the use of the federal facilities for storage and
26 conveyance when excess capacity exists.

27 As previously indicated, the Reclamation law, the
28 Warren Act, allows for the use of federal facilities for
29 storage and conveyance of non-project water when excess
30 capacity exists in those facilities.

31 Briefly, the testimony explains some of the
32 requirements for contracting under the Warren Act.

33 The contractor requesting a contract to store or
34 convey non-project water when excess capacity exists must
35 have a valid water right for that non-project water supply.
36 Under the Warren Act, there is charge for the use of the
37 facilities. Currently in the Central Valley Project that
38 charge is a cost of service rate.

39 Really, that's about all I have.

40 There was no request by El Dorado Irrigation
41 District or El Dorado County Water Agency for a Warren Act,
42 so my statement that I made was very brief and very general
43 in nature, since we don't have a request before us for a
44 specific contract.

45 That's all.

1 MS. MOORE: A We would not enter into a Warren Act
2 contract with a contractor that did not have a valid water
3 right for the water they would be looking at.

4 Q So, obtaining a water right from this Board would be
5 a precondition to your executing a Warren Act contract with
6 El Dorado; isn't that true?

7 A It would be a precondition of a contract.

8 Q Are you aware of the fact that the Section 305
9 amendment allowing in the Warren Act for M&I use was due to
10 congressional action instituted by the City of Santa
11 Barbara as well as El Dorado County with respect to the use
12 of Sly Park and Folsom for Warren Act purposes?

13 A Would you rephrase that one more time?

14 Q Do you have any knowledge, are you aware of whether
15 or not that legislation allows the Warren Act to be used
16 for M&I purposes, was enacted at least in part for the
17 purpose of allowing El Dorado County to utilize Sly Park
18 and Folsom for storage where there would be excess storage
19 capacity?

20 A All I know is the act provides for M&I use in
21 federal facilities. The Central Valley Project and Cachuma
22 were mentioned in that act, that the Warren Act could be
23 used for M&I purposes.

24 Q With respect to area of origin, Mr. Sandberg, is it
25 your contention that no water out of Folsom is utilized for
26 export purposes?

27 MR. SANDBERG: No, that is not my contention.

28 Q So that then, under, I guess this goes to Mr.
29 Renning then since you are the water rights expert with
30 respect to the Bureau of Reclamation, is it your contention
31 then that when water is being exported from Folsom
32 Reservoir that those exports have a junior priority to the
33 rights of areas within the areas of origin?

34 MR. TURNER: I think you are asking for a legal
35 conclusion and that is not a determination that is made by
36 Mr. Renning.

37 MR. SOMACH: Mr. Renning, can you answer that
38 question?

39 MR. RENNING: I believe we are getting into a very
40 gray legal area here in which I would not truly be able to
41 give any kind of determination of how exactly the area of
42 origin statutes work with respect to the issue that is
43 facing the Board in this case.

44 Q You do concede, however, that water out of Folsom is
45 utilized for export purposes; is that correct?

1 A In part, yes, it is.

2 Q Now, is the Sacramento River tributary to the
3 American River?

4 A Now, I would not consider it tributary to the
5 American River.

6 Q Okay, is the Delta tributary to the Sacramento
7 River?

8 A No, water flows downhill.

9 Q Pretty obvious concept; right. So that, as a
10 consequence, some area that would be tributary to Folsom
11 would by definition have to be upstream of Folsom; isn't
12 that correct?

13 A Certainly.

14 Q Are you familiar with the Bureau of Reclamation's
15 water rights for Folsom?

16 A Yes, I am.

17 Q And are you familiar with terms and conditions
18 within those permits?

19 A Yes, I am.

20 Q And isn't it true that those permits specifically
21 recite, and let me read here, that the amounts which may be
22 diverted under rights acquired or to be acquired under this
23 permit are and shall remain subject to reduction by future
24 appropriation of water for reasonable beneficial use within
25 the watershed tributary to Folsom Reservoir. Are you
26 familiar with that term?

27 A Yes, I am.

28 Q And that's in the permit for Folsom; is that
29 correct?

30 A Yes.

31 Q And an area tributary to Folsom then, by your
32 definition, would be areas upstream of Folsom; is that
33 correct?

34 A Yes.

35 Q And El Dorado County is upstream from Folsom
36 Reservoir?

37 A Yes.

38 Q And the diversions that are subject to this hearing
39 are all upstream of Folsom Reservoir; is that correct?

40 A Yes.

41 MR. SOMACH: I have no other questions.

42 MR. STUBCHAER: All right. Mr. Gallery.

43 CROSS-EXAMINATION

44 by MR. GALLERY:

1 Q I have just a couple of questions for Mr. Renning.
2 I wanted to ask you a couple of questions about Application
3 5618 that the Bureau has which is a State-filed
4 application.

5 MR. RENNING: A I do not believe Application 5618
6 is a State-filed application.

7 Q Oh, it is not?

8 A No.

9 Q This has nothing to do with the last colloquy with
10 Mr. Somach. I just wanted to know about Application 5618,
11 which is earlier in priority than the State filing that El
12 Dorado is asking for a partial assignment of?

13 A Yes, it is.

14 Q It is for power and it is for storage at Echo,
15 Medley, Twin and Silver Lakes?

16 A Yes, it is.

17 Q And can you tell us what the amounts of storage are
18 under that -- it is not a license, I guess it is a permit?

19 A No, it is a license.

20 Q It has been licensed?

21 A Yes, and I am sorry I don't have the permit with me
22 or the license with me, and I don't have those quantities.

23 Q Would you have any recollection of whether it is for
24 the full amount of storage or only a portion of the
25 reservoir?

26 A My recollection is it is for the full amount.

27 Q So that I guess this filing then of the Bureau for a
28 storage at Silver Lake and Caples Lake is ahead of the
29 State filing that El Dorado is applying for, but is junior
30 to PG&E's power rights.

31 Does that sound right?

32 A Well, this application was originally made by the
33 PG&E Company, and I believe it is concurrent with other
34 filings that they have for the other features of their
35 facility on the American River.

36 MR. GALLERY: Those are all my questions.

37 MR. STUBCHAER: Thank you, Mr. Gallery.

38 Mr. Jackson.

39 CROSS-EXAMINATION

40 by MR. JACKSON:

41 Q Mr. Renning, is there any way to separate out which
42 of the water for Folsom Lake is used for public trust uses
43 and which is not?

44 A As a practical matter, I do not think that can be
45 done.

1 Q Does it change depending on conditions every year
2 and month to month?

3 MR. TURNER: If I could just raise a slight
4 objection, I am not sure exactly what Mr. Jackson is
5 referring to as public trust purposes. Could you be a
6 little more specific? It would be helpful.

7 MR. JACKSON: We will go through them one at a time.

8 Q What is the maximum storage at Folsom?

9 A It is approximately one million acre-feet.

10 Q Of that one million acre-feet, how much of it was
11 used last year to meet Delta standards?

12 A That type of analysis, as I mentioned before, as a
13 practical matter can't be done because of the integrated
14 operation of the State and Federal projects, and of the
15 Central Valley Project in particular, and of the integrated
16 operation in meeting Delta standards of the State and
17 Federal projects.

18 You cannot precisely place an acre-foot of water
19 through the system and say this is where it is going and
20 this is the purpose of use that it has at this particular
21 time.

22 MR. STUBCHAER: To understand your question, you are
23 talking about the capacity of the reservoir, not the amount
24 of water in the reservoir?

25 MR. JACKSON: I started out with the capacity and
26 then I wanted to know how much water of that capacity was
27 used last year to meet Delta standards.

28 Q I guess the best way to do is explain where I am
29 going. It was clear from the questions of Mr. Somach that
30 your water rights are limited by the county of origin
31 theory; are they not?

32 MR. RENNING: A Yes. however, exactly what those
33 statutes mean and how they are to be applied --

34 Q Is a subject of lots of litigation later.

35 MR. STUBCHAER: Let him finish his answer.

36 A I was going to say it is not clear exactly what
37 those statutes mean.

38 MR. JACKSON: Q But it is clear that the Bureau is
39 under --

40 A We operate pursuant to State law.

41 Q Pursuant to State law and that the Bureau is under
42 judicial control in regard to keeping the Delta in the
43 conditions that are required by the standards; correct?

44 A Yes.

1 Q Is there any way to tell what the effect of the
2 21,000 acre-feet that is being removed from your control at
3 Folsom by the diversions will have on your ability to meet
4 Federal and State environmental laws?

5 A We can't precisely say exactly what will happen if
6 the inflow to Folsom Reservoir is reduced by a particular
7 amount; however, we can say in a general sense that to the
8 degree that inflow to any of the Central Valley Project
9 reservoirs are reduced for some particular reason, it will
10 make it more difficult for us to meet the various purposes
11 for which we operate the project.

12 MR. SANDBERG: A To the extent that that reduction
13 in inflow occurs during the summer period, that is also
14 less water that can bypass through the facilities and,
15 therefore, would potentially tax the system even more
16 because it would require that to meet environmental
17 standards that it would take out of storage.

18 Q Now, one of the operating schemes which has been
19 used by the Bureau, and I think you have referred to as the
20 effect of cold water storage at Shasta, even though Shasta
21 is not tributary in any fashion, is because you have been
22 using Folsom water early in the summer in order to keep the
23 Delta in legal condition, and reserving water at Shasta for
24 the fall-run chinook salmon; is that correct?

25 A That is an operation we did do during the recent
26 drought period.

27 Q Is that the effect that you were talking about by
28 losing inflow at Folsom on cold water?

29 A To the extent that it would reduce inflow to Folsom
30 during those periods, it would eventually tax Shasta more
31 because there's less water in the Central Valley Project
32 system and it could potentially affect the cold water
33 storage at Shasta.

34 Q Has the Bureau done any operational models to see
35 how much of your operation could be impacted in drought
36 periods by the removal of this water?

37 A No, no operation studies have been done at this
38 point.

39 MR. JACKSON: Thank you. I have no further
40 questions.

41 MR. STUBCHAER: Staff.

42 EXAMINATION

43 by MS. KATZ:

44 Q I just have one question and I am not sure which one
45 of you two gentlemen would know the answer, if you know.

1 Q It is at a very low level, as I recall from previous
2 testimony that I have read. I forget the number myself.

3 At low flow conditions when this water would be
4 taken in the upper watershed, from the testimony I have
5 heard, can you confirm that there is no less than five
6 power plants involved here when we include Nimbus -- El
7 Dorado powerhouse, White Rock, Chili Bar, Folsom and
8 Nimbus. Is this correct, to your knowledge?

9 A Yes.

10 MR. LAVENDA: I have no other questions.

11 MR. STUBCHAER: Mr. Canaday.

12 EXAMINATION

13 by MR. CANADAY:

14 Q I just have a couple. What is the average annual
15 inflow to Folsom Reservoir?

16 MR. RENNING: A Approximately two and a half
17 million acre-feet.

18 Q Two a half times the reservoir capacity?

19 A Yes.

20 Q And if the 17,000 additional acre-feet are used for
21 consumptive use above Folsom, have you determined what the
22 export reduction would be at Tracy?

23 MR. SANDBERG: A Due to the integrated nature of
24 the Central Valley Project, it is very difficult to
25 determine where the impact of the 17,000 acre-feet would
26 potentially be. It could be partially a reduction in
27 export. It could be partially a loss of water in storage
28 for other environmental needs. It is very hard to pick and
29 to analyze where the impacts would be within the Central
30 Valley Project because of its integrated nature.

31 MR. STUBCHAER: On the average with the integrated
32 project, of the reservoir releases, what percentage used
33 for carriage water or losses, Delta outflow, what
34 percentage is exported when you are making releases from
35 reservoirs as opposed to high flows?

36 MR. RENNING: A I don't think we have ever analyzed
37 it in that way. As I mentioned before, we don't truly
38 characterize what each acre-foot --

39 MR. STUBCHAER: I am talking about the big lump, the
40 big pie. So much of the water is exported out of the
41 reservoir releases.

42 A Concerning the operation of the Central Valley
43 Project, we could determine in a general sense what those
44 numbers are, and we don't have those here today. We could
45 prepare this for you.

1 MR. STUBCHAER: I have heard the figures used for
2 carriage water losses from Folsom to Sacramento of 30
3 percent for outflow and 70 percent for export.

4 A Those are the figures we imposed upon water
5 transfers in the last several years that were facilitated
6 by the Central Valley Project and State Water Project. And
7 to the extent that, for instance, a hundred acre-feet of
8 water was being transported across the Delta by the
9 projects for export at Tracy or Banks, we determined that
10 an average or reasonable figure for the carriage water or
11 the extra water that would be needed to meet Delta
12 standards in light of the fact that we are pumping 100
13 acre-feet more at those locations, 30 acre-feet would have
14 to be released for that purpose.

15 MR. STUBCHAER: That's a rough estimate. Would it
16 be fair to use that percentage on the 17,000 acre-feet?

17 A I would hesitate to say that the impact of the
18 17,000 acre-feet, or anything associated with it, could be
19 analyzed in that way.

20 Off the top of my head, I would simply think that's
21 not an appropriate analysis.

22 MR. STUBCHAER: Does the tool exist to analyze the
23 impact or would you use DWRSIM or some other model to
24 analyze the impact on exports of the loss of 17,000 acre-
25 feet from Folsom at the time that loss will occur?

26 A Yes, you could do that. However, the impact of a
27 17,000 acre-foot change on projects that are as large as
28 the Central Valley Project and the State Water Project are
29 very small. I think it fair to say that in a general sense
30 what we are concerned about here is the legal precedent
31 that was set by allowing projects like this to go forward.

32 Certainly, the Central Valley Project or some other
33 large water project could live with very minor impacts to
34 it, but when the minor impacts begin to be major impacts,
35 then that's where the problems come.

36 MR. STUBCHAER: One last question.

37 MR. SANDBERG: A Can I expand on that, too? One of
38 the problems -- I don't want to characterize it as a
39 problem, but one of the realities of today's operation is
40 that more and more environmental aspects are being
41 integrated into the operation, and to do a study at this
42 time has been difficult because, as we all know, it seems
43 like the rules of water operations at this point in time
44 are just starting to settle down, and this is also part of
45 the whole cumulative impact concept of all these changes

1 occurring to the water operations, including the potential
2 out of the El Dorado project.

3 MR. STUBCHAER: If you were going to use a model,
4 which model would you use?

5 A I believe the operations have gotten very complex at
6 this point in time and it would take quite a bit of study
7 to even analyze whether the models are capable of doing
8 that.

9 MR. STUBCHAER: There is mention in your exhibit of
10 Fish and Wildlife wanting a minimum pool at Folsom, and
11 then at the other side you have the Corps of Engineers
12 wanting maximum flood pool at certain times of the year.

13 How do those constraints affect the operation of
14 Folsom?

15 A With the new studies going on the flood control
16 operation, it is anticipated sometime in the future there
17 will be additional flood control reservation. That is my
18 opinion. That will increase the flood control reservation.

19 At the same time there have been numerous addresses
20 to have a minimum pool at Folsom Reservoir for ecological
21 resources. With the 500,000 acre-foot that the California
22 Department of Fish and Game is proposing the Bay-Delta
23 proceedings, and with some of the proposals on the flood
24 control, we are talking about probably what I would
25 characterize as a 150,000 acre-foot pool in Folsom.

26 MR. STUBCHAER: Would that request for 500,000 acre-
27 foot minimum pool be the minimal or a minimum at a given
28 point --

29 A It would be a minimum. The proposals generally tell
30 you that there would be a minimum pool by the October 1
31 date, which is also concurrently about the time when your
32 flood control reservation begins.

33 MR. STUBCHAER: So, those are pretty severe
34 constraints that are being tossed about?

35 A Yes.

36 MR. STUBCHAER: Would those constraints lessen or
37 increase the impact of the loss of 17,000 acre-feet of
38 water upstream?

39 A I believe that they would increase the impact.

40 MR. STUBCHAER: Okay, thank you. That's all I have.
41 Do you have any redirect, Mr. Turner?

42 MR. TURNER: No, I don't think I would have anything
43 further by way of redirect, Mr. Stubchaer.

44 MR. CANADAY: Can we get them to restate the figure
45 that they testified to as the minimum pool?

1 MR. STUBCHAER: Five hundred thousand.

2 MR. SANDBERG: A There is a proposal in the Bay-
3 Delta proceedings, proposed by the California Department of
4 Fish and Game as an example of some of the proposed
5 criteria on Folsom. The proposed criteria was for the
6 500,000 acre-foot storage pool at Folsom on the October 1
7 date, minimum storage.

8 MR. STUBCHAER: Mr. Turner, did you wish to
9 introduce your exhibits into evidence?

10 MR. TURNER: Yes, I would like to offer U. S. Bureau
11 of Reclamation Exhibit Nos. 1, 2, 3, 4-A, 5 and 6.

12 MR. STUBCHAER: Any objection to receiving these
13 exhibits? If not, they are accepted. Thank you.

14 MR. TURNER: Thank you.

15 MR. STUBCHAER: Mr. Volker, do you have anything you
16 wish to request or announce?

17 MR. VOLKER: Yes, Mr. Chairman. My late panel is
18 ready and we are prepared to proceed right now, and I think
19 we can get everyone off today, and that would permit Mr.
20 Lickwar to go on his trip to Europe.

21 MR. STUBCHAER: Is Cal SPA willing to defer?

22 MR. JACKSON: Sure.

23 MR. SOMACH: It was my understanding Cal SPA was
24 part of the Volker case.

25 MR. JACKSON: That is why we are willing to defer.

26 MR. STUBCHAER: All right, you are next.

27 MR. VOLKER: Thank you.

28 MR. STUBCHAER: Mr. Volker, how long do you think
29 this panel will take on direct?

30 MR. VOLKER: About half an hour.

31 MR. STUBCHAER: Not half of the four hours?

32 MR. VOLKER: In light of the constraints under which
33 we are now operating.

34 MR. STUBCHAER: You're really going to summarize.

35 MR. VOLKER: We will try to move this right along.

36 Mr. Chairman, we have today the lay panel on behalf
37 of the protestants League to Save Sierra Lakes, and
38 associated protestants, seven witnesses, Thomas Zuckerman,
39 Chairman of the Board of Kirkwood Associates; Leonard
40 Turnbeaugh, Director of Public Works for Alpine County, and
41 Chairman of that County's Fish and Game Commission; Norbert
42 Rupp, co-founder of the League to Save Sierra Lakes and
43 currently its treasurer; Brad Pearson, Kit Carson Lodge on
44 Silver Lake; Kirby Robinson, President of the Plasse

1 Homeowners Association; John Plasse of Plasse Resort; and
2 Linda Emerson, a member of the League to Save Sierra Lakes.
3 Now, three of these witnesses have not yet been
4 sworn and I would ask that they be sworn.

5 (The witnesses were sworn.)

6 THOMAS ZUCKERMAN,
7 having been sworn, testified as follow:

8 DIRECT EXAMINATION

9 by MR. VOLKER:

10 Q Mr. Zuckerman, we have marked your testimony as
11 Exhibit 1. Do you have that?

12 A I don't have it in front of me, but I have reviewed
13 it.

14 Q Is that a true and correct statement of your
15 testimony in this proceeding?

16 A Yes, it is.

17 Q For the record, would you state your name, spelling
18 your last name, and give your address and present
19 occupation, and position with Kirkwood Associates.

20 A My name is Thomas M. Zuckerman, Z-u-c-k-e-r-m-a-n.
21 My office address is actually in Stockton at 136 West
22 Webber, 95202.

23 I am an owner and member of the Board of Directors
24 and actually the Chairman of the Board of Directors of
25 Kirkwood Associates, Incorporated, which is the owner and
26 operator of the Kirkwood Resort on Kit Carson Pass in
27 Alpine, Amador and El Dorado Counties.

28 Q Thank you. Would you please provide us a succinct
29 summary of your testimony?

30 A Well, this is kind of a big fish, small pond type of
31 situation. Kirkwood is a very important part of the Carson
32 Pass area, both recreational and economically, and I stress
33 to you the importance of the map also, the Silver Lake
34 recreational facilities as well as the potentiality of
35 utilizing a portion of that supply, generally speaking, in
36 the wintertime for both domestic and for snow-making
37 activities on the part of the ski resort.

38 And in looking at the documents that were filed by
39 the applicants in the case, we were distressed not to find
40 a more complete explanation of what the impacts of their
41 proposed uses of the PG&E water rights would have upon the
42 lakes and the streams that flow from them, and eventually
43 upon our ability to continue to operate and provide both
44 employment and recreational opportunity for the people of
45 this state and other states.

1 MR. VOLKER: Thank you. Next, Mr. Chairman, we have
2 Leonard Turnbeaugh, who is the Alpine County Director of
3 Public Works, and also, is Managing Director.

4 LEONARD TURNBEAUGH,

5 having been sworn, testified as follows:

6 DIRECT EXAMINATION

7 by MR. VOLKER:

8 Q Mr. Turnbeaugh, would you state your name, spelling
9 your last name, and your address, your present occupation
10 and your relationship to Alpine for the record, please.

11 A My name is Leonard Turnbeaugh, T-u-r-n-b-e-a-u-g-h.

12 I am Director of Public Works for Alpine County,
13 which includes being the County Planner. I have been
14 employed by Alpine County for 23 years.

15 The address is 50 Diamond Valley Road, Markleeville,
16 96320.

17 Q I would like to show you Exhibit 2 of the League to
18 Save Sierra Lakes and associated protestants' exhibits. Is
19 this a correct and true statement of your testimony today?

20 A Yes, it is.

21 Q Would you please summarize your testimony.

22 A Alpine County was founded in 1864 and is
23 approximately 723,000 square miles. Of that, 95 percent of
24 the land is governmentally owned. Forty to 50 percent of
25 that land is in wilderness areas.

26 Because of this high government ownership, tourism
27 is our primary industry. We estimate that over 80 percent
28 of our people are employed directly or indirectly through
29 the tourist economy.

30 Highway 88, which we consider leading from the
31 Jackson area into the State of Nevada is approximately 80
32 miles in length, and that corridor is very important to our
33 economy.

34 There's estimated 3-1/2 million visitors to Alpine
35 County annually. An example of that is the 1986 flood
36 study, our future recreational use determination study done
37 by the U. S. Forest Service which showed in 1986
38 approximately 500,000 summer visitors to the Carson Pass
39 area. This does not include winter visitors, visitors
40 along that corridor into the Markleeville area, et cetera.

41 Because of this significance, Highway 88 is
42 designated as a scenic highway, designed as a federal
43 scenic byway, and also been nominated as national highway
44 to the new national highway system.

1 That significance, we feel around Caples Lake. The
2 impact of Caples Lake drawdown would directly affect that
3 tourism economy.

4 The application that's before the Board for 21,581
5 acre-feet of water is for all the water that is in Caples
6 Lake, not a portion of it, but all of the water.

7 That would be similar, if I can give an example, to
8 draining Lake Tahoe and expecting the economy of Tahoe
9 basin to continue as if nothing were happening.

10 We have not seen any agreement between El Dorado
11 County, El Dorado Irrigation District, or PG&E for the
12 drawdown of these lakes. We have heard testimony that they
13 would not change, but we have not changed, but we have not
14 seen any.

15 We have been forced by this to make our own
16 applications for water in Caples Lake to protect it for
17 recreational purposes in order to protect our economy,
18 which is equivalent to their municipal and industrial
19 economy.

20 I believe that the change in use of water from a
21 non-consumptive use to a consumptive use will ultimately
22 affect the use and drawdown of those lakes.

23 It cannot go from a non-consumptive generating power
24 to consumptive use, which is water for people and not at
25 some point in the future, put that use above the non-
26 consumptive type use and drawdown that has historically
27 gone on at those lakes.

28 That, basically, concludes my summary.

29 MR. VOLKER: Thank you, Mr. Turnbeaugh.

30 Mr. Chairman, our next witness is Mr. Norbert Rupp,
31 co-founder of the League to Save Sierra Lakes.

32 NORBERT RUPP,
33 having been sworn, testified as follows:

34 DIRECT EXAMINATION

35 by MR. VOLKER:

36 Q Mr. Rupp, have you examined the testimony we have
37 marked as Exhibit 3?

38 A Yes, I have.

39 Q Is that a correct and true statement of your
40 testimony in this proceeding?

41 A Yes, it is.

42 Q Would you please state your name?

43 A My name is Norbert Rupp, Box 295, Kirkwood, 95646.

44 Q Will you please summarize your testimony.

1 A I represent the human element in this equation. I
2 have been very impressed with those that have come before
3 you in the last three days and their quality and their
4 professional expertise.

5 The human element is also a part of this equation.
6 I represent the human element here.

7 When the Kirkwood community first became aware of
8 the applications under the NOP for this project, was a year
9 ago December. We had 16 days, that is, three families had
10 16 days to respond to this. We quickly had to find the
11 NOP, find out what it was, digest it, develop a form of
12 action and implement it.

13 In that short period of time, by ringing and
14 knocking on doorbells, mailing letters and so on, we
15 generated 117 people that responded to the NOP.

16 I won't go through the rest of the process of
17 incorporation and so on, but we are a viable organization
18 with 400 people, and to Mr. Lavenda's chagrin, we generated
19 3,200 blue cards, and I see staff all smiling there.

20 I would have to say we created a lot of problems for
21 them, but they certainly responded in a most professional
22 manner.

23 We are the human element, the people, the users, and
24 the people that we represent come from a variety of
25 locations -- in other words, we are not just representing
26 those of the Carson Pass area, but California, Nevada, and
27 we have many members throughout the United States, and
28 looking at the addresses of those people that sent in
29 notices, we had people throughout the world.

30 The users up there are the people that love that
31 place. I wish we had a map so I could indicate exactly
32 where the lakes are and their uniqueness as they lie in
33 California, not only for the lakes, but also, for their
34 history.

35 I would like to go over and I think I can talk loud
36 enough to get it across.

37 Q For the record, that is County Water Agency Exhibit
38 66 entitled *General Map*.

39 A Caples Lake lies almost at the very top of the
40 Sierra crest. It runs right through here. We are talking
41 about a lake that was unique in California history.

42 The first immigrant trail came right through this
43 area, and right along here, and this is why you later --

44 MR. STUBCHAER: You say *along here*.

45 A Along the south end of Silver Lake.

1 The people that use these lakes have an opportunity
2 to have a unique experience environmentally and
3 historically in that this area is important to California's
4 history.

5 Aloha Lake to the north, we feel akin to that and we
6 feel akin to the concern of those that use it, although
7 they don't have as viable a response group as we do because
8 of the uniqueness of our Carson basket community.

9 The people that use these lakes are the fishermen,
10 the outdoors-person that likes to go up to the Carson Pass
11 area and experience the bloom of the wildflowers, and for
12 those of you that are here today, I recommend you come up
13 there. This is the time to get out and see the beauty of
14 that area at a very very unique time, the non-user time,
15 the spring and fall is when that area is spectacular. You
16 get in there in the fall, the aspens are turning, it is
17 getting cold in the evening and the days are warm, and it
18 is a beautiful, beautiful area.

19 The water use is by a variety of people. Young
20 families come in there. This is an area where young
21 people, young families that do not have all of the economic
22 ability to use Mr. Zuckerman's facility, but they can come
23 there and have this kind of outdoor experience that is very
24 very inspirational, and I might say spiritual kind of
25 experience.

26 There's the equestrians and there's the hikers.
27 There's the climbers and later there is the skiers, and
28 what makes this place beautiful are the lakes. If we
29 didn't have these lakes, this would not be the attraction
30 that it is today, and we hope that it will be the
31 attraction tomorrow.

32 We feel, and I think the people that I represent
33 feel, that we are indebted to those who have preserved it
34 to this point, and we want to be assured that it will be
35 that way tomorrow. In other words, we have listened to a
36 variety of things, we have tried to be a part of resolving
37 this problem, and I might say we have attended many many
38 meetings up to this point. We tried to look for answers to
39 this problem of drawdown because the drawdown is the issue
40 that we are concerned about.

41 What do we have here through the May-through-October
42 season?

43 I will try and cut this short here. I get kind of
44 wound up about that place because I pretty well love it.

1 But we are concerned about the drawdown, about what
2 kind of assurance -- not the professional, not the people
3 with all the expertise, but the lay people when we have
4 tried to read the documentation and see what's in there and
5 see what kind of protections there are fore this drawdown,
6 I have to say as a lay person it is sure confusing, and in
7 listening to the experts that have been here the last two
8 days, I have sensed they are confused as well.

9 We don't see the kind of specifics that will give us
10 the assurances that we feel are needed. We attempted to
11 participate in the negotiating proceedings. There was a
12 meeting in Jackson in which Alpine and Amador Counties, and
13 the community was reached, and the outcome of that meeting
14 was, well, you should file a protest with the State Water
15 Board, and that didn't seem like a reasonable answer to
16 negotiations.

17 We invited two members of the Water Agency to come
18 to Silver Lake, and with Mr. Upton and Mr. Senters
19 (phonetic), we had a very very interesting dialogue. They
20 could see our concerns and the need to resolve those
21 concerns. They invited us back to the Water Agency, made a
22 presentation to the Water Agency, and they directed
23 negotiations with staff.

24 Unfortunately, and I wish I didn't say
25 unfortunately, to this date there have been no negotiations
26 to try and resolve those concerns.

27 I would say at this point after listening to the
28 testimony that has been given the last two days, I am glad
29 we didn't, because of the lack of information that we would
30 have been reacting to, and at this time, certainly, I don't
31 feel that I have any ability to respond in that fashion.

32 To sum up, I somewhat feel like we are part of the
33 people of Owens Valley at the beginning of the century and
34 we have seen Eden already come to our area, and we are
35 waiting for Mulholland (phonetic) to come and take the rest
36 of it away.

37 Q I wanted to ask a follow-up question. You are also
38 a member of the Board of Directors of Kirkwood Meadows
39 Public Utility District, another protestant; is that
40 correct?

41 A Yes, I am.

42 Q Could you comment very briefly on their interest in
43 this matter?

44 A Kirkwood Meadows Public Utility District has the
45 responsibility of wastewater, water treatment and other

1 sundry activities that would constitute the local community
2 at Kirkwood.

3 We have a need for water. I would say last year we
4 drilled, or two years ago, we drilled three wells in the
5 valley. Water is critical to us. It's critical to the
6 economic viability of our area and it is critical
7 particularly in the recreational aspect to maintain a full
8 service four-season operation.

9 MR. VOLKER: Thank you.

10 Mr. Chairman, our next witness is Brad Pearson,
11 Owner-Manager of the Kit Carson Lodge.

12 BRAD PEARSON,

13 having been sworn, testified as follows:

14 DIRECT EXAMINATION

15 by MR. VOLKER:

16 Q Mr. Pearson, would you state your name and spell
17 your last name, and give you address, your present
18 occupation and your position with the protestants.

19 A My name is Brad Pearson, P-e-a-r-s-o-n. I am the
20 owner and operator of the Kit Carson Lodge located on
21 Silver Lake at Highway 88. I am here today presenting
22 testimony representing Kit Carson Lodge.

23 Q I will show you Exhibit 4, *Testimony of Brad*
24 *Pearson*, and ask you if this is a true and correct
25 statement of your testimony today?

26 A Yes, it is.

27 Q Would you please summarize your testimony.

28 A I will try and be as succinct as possible. There
29 will be a few items that I will read, but I will try and
30 summarize as much as possible.

31 Kit Carson was established in 1926. It is located
32 on 12 acres of lakeside frontage on Silver Lake adjacent to
33 the dam. Kit Carson Lodge presently serves over 110
34 overnight guests with a staff of 14.

35 In 1991 we served almost 11,000 overnight visitors.
36 We have restaurant facilities, boat docking facilities,
37 it's a destination resort. Many of our people come year
38 after year, generation after generation. We have a very
39 stable population, very high occupancy rate.

40 I would like to add that Kit Carson Pass area
41 receives nearly half a million recreational visitors during
42 the summer season as documented in the U. S. Forest Service
43 campground adjacent to us, which is a Forest Service
44 campground and receives 27,000 overnight visitors.

1 On Silver Lake we have in excess of 2500 bed spaces.
2 It is a very highly populated recreation area, this Carson
3 Pass area.

4 Our resort is very much water oriented. When lake
5 levels go down, our beach is exposed to rocky beach
6 waterfront areas. We are unable to dock boats and our boat
7 dock and sunbathers have a hard time sunbathing or swimming
8 on a rocky beach that has replaced our traditionally sandy
9 beach. This typically happens late in the season if PG&E
10 has done unseasonal drawdown to do lake maintenance.

11 We feel that with the new demands for domestic water
12 supply, that the existing recreational water levels which
13 we have enjoyed for many years will be replaced by the
14 demand for domestic water sources.

15 I will quickly go through what our concerns are.
16 Kit Carson Lodge finds fault with the water application
17 permitting in the following areas. The applicant has
18 ignored substantial public controversy and has casually set
19 aside this concern asserting no change in past lake
20 operations. However, the applicant has been unable to
21 describe those lake operations.

22 The applicant has been able to describe end-of-month
23 lake levels, yet has been unable to describe the how's,
24 why's and wherefore's PG&E uses to operate the lake.

25 Until this morning with the introduction of the
26 Department of Fish and Game document, there has been no
27 description in any public document presented by the
28 applicants of PG&E's lake drawdown scheduling procedures,
29 their policies, their strategies, and the applicant has
30 admitted this.

31 So, at the present time we really don't know how the
32 lake is operated, and yet, the project is predicated on a
33 continuation of that historic operation of the lake.

34 We feel there has been a total disregard for the
35 concerns and economic interests in the affected areas, and
36 we feel that this Board is only cavalier.

37 Both Kirkwood and Kit Carson, in response to the
38 draft environmental report, raised issues of economic
39 impact. The response in the Draft Environmental Impact
40 Report is, evidence in the Draft Environmental Impact
41 Report establishes there is no link between the local
42 economy and the environment.

43 If there ever were two businesses whose economies
44 were directly linked to the environment, it would be the
45 ski resort and the lakeside summer resort.

1 We feel that in the case of Silver Lake, in
2 particular, the applicant has asked for cumulative water
3 rights in addition to the 5,000 acre-feet which it enjoys
4 through the 1919 agreement with PG&E, and has asked for an
5 additional 6,000 acre-feet. This totals 11,000 acre-feet
6 on Silver Lake, a lake which the FERC license stipulates is
7 a lake with a content of 8,590 acre-feet. They are asking
8 for cumulative water rights of 128 percent. And on the
9 other lakes they are only asking for a total of the
10 contents of 100 percent. There is no explanation for this.

11 PG&E right now has two water rights there, one of
12 5,000 and one of another 5,000. One is for power only and
13 the other for power and consumption. We have no idea why
14 they are asking for more than everybody else has.

15 El Dorado County maintains there is sufficient water
16 in Silver and the other lakes in question, and while we
17 have heard a lot of discussion that there's, indeed, a safe
18 yield of 17,000 acre-feet, we haven't been able to find any
19 documentation as to when that water can come out of these
20 lakes. We feel that in the case of 1988, which was,
21 indeed,
22 not a year as bad as 1977, we were not capable of getting
23 this amount of water out of these lakes.

24 We would like to know where the 17,000 acre-feet
25 comes from if it doesn't come from the lakes. We would
26 like to see documentation to that effect.

27 We feel, as I have stated, that our economy is
28 directly tied to this lake. We feel this is a lake that is
29 totally enclosed in Amador County. Both the lake, the
30 watershed and the diversion works are totally within Amador
31 County, and we feel that it is imperative that the
32 recreational needs, the historic needs over the last 100 or
33 more years be respected before the applications to export
34 water to another county.

35 We feel that the existing users have priority rights
36 to this water, and certainly, that the recreational users
37 have priority rights by virtue of their existence and by
38 virtue of the county of origin.

39 We feel that under CEQA foreseeable possibilities
40 need to be looked at. We have seen over the last year in
41 particular and today, that more than likely when FERC
42 licensing comes back up, the Department of Fish and Game
43 will be asking for higher fish flows out of these lakes.

44 Right now, in Silver Lake it is two cubic feet per
45 second. That amounts to 1400 acre-feet per year. If that

1 is doubled or tripled, that is a substantial amount.
2 That's certainly foreseeable. It was reiterated today and
3 it was mentioned three times yesterday, and I think that
4 that needs to be taken into account in these water rights
5 permits.

6 I think that FERC relicensing which will start in
7 1997 and conclude in the year 2002, and whatever conditions
8 may come up then need to be discussed at this point and
9 looked at. It is very possible that FERC licensing will
10 alter the operation of the lake in question.

11 We feel it is imperative that PG&E be brought into
12 the equation at this point since this project cannot
13 operate without an operating agreement with PG&E. There is
14 no discussion of that operating agreement. We have seen
15 testimony to the effect that that operating agreement does
16 not, in fact, exist.

17 It is quite likely that El Dorado County could
18 become a whole or part owner of the PG&E El Dorado project
19 including the lakes and canals and powerhouses. We have
20 seen newspaper articles to that effect.

21 At the end of February this past year there was
22 discussion between PG&E and El Dorado County, and that's
23 something that is certainly in the foreseeable future.

24 Kit Carson Lodge believes it is premature to draw a
25 conclusion in terms of permit conditions and to issue a
26 permit at this time.

27 I will conclude with a little story I have got in my
28 testimony. Last spring a group of us came in here and
29 talked to the senior staff. They were very generous in
30 giving us a couple of hours of their time. One of the
31 issues we raised was what could be the outcome of this
32 whole process, what will we end up with. We posed the
33 scenario that we end up with a water rights permit that
34 would be conditioned with protective lake levels for
35 recreational water users, levels that might even be very
36 much to our liking. We said, well, what happens if several
37 years down the line when 150,000 new people move into El
38 Dorado County and those people now become dependent on this
39 water, a severe drought exists for several years, El Dorado
40 County comes back to the State and says, folks, we are
41 really sorry. You know, we really want to be able to live
42 up to those conditions. We really respect these
43 recreational water uses.

44 However, we are in a situation now where we have got
45 a health and safety crisis. We have 115,000 people who are

1 dependent upon this water supply and we have a drought. We
2 cannot serve these existing customers. We want to either
3 amend or apply for anew permit.

4 At that point, then the County puts its requirements
5 forth to you in new environmental documentation, a new
6 application, but at that point the foot is already in the
7 door. The 115,000 people now live in the County of El
8 Dorado and now depend on this water.

9 And the staff very candidly said to us when we said
10 what would happen at that point -- your Board staff very
11 candidly said at that point, if the case was valid and made
12 for a health and safety crisis, if we had a sanitation
13 problem in this county, then we would probably have to
14 consider the prior recreational and scenic uses of these
15 lakes to be subordinate to the current health and safety
16 crisis that exists in El Dorado County.

17 At that point, a new permit would be issued. Our
18 priority uses would be, you know, essentially cast aside.

19 That concludes my testimony.

20 Q Mr. Pearson, I noted that you stated in your
21 testimony that the diversion works for Silver Lake were
22 wholly within Amador County. Have you with you today a map
23 that illustrates that point?

24 A Yes, I can produce a map. This issue came up at the
25 public meeting at Kirkwood. A number of old-time residents
26 of Silver Lake informed staff of El Dorado County that it
27 was their belief that the lake, the dam and the diversion
28 works were totally within Amador County.

29 The county line, in consultation with the county
30 surveyor or Amador County, was the old Wagon Road. It's
31 not the middle of the highway which goes down the middle of
32 the dam.

33 I have a map that shows the old USGS quadrangle for
34 this area. It definitely shows that the county line does
35 divert from the road at Silver Lake, it does go downstream
36 of the dam and the diversion works which are on the west
37 side of it.

38 MR. STUBCHAER: Do you have copies of that for
39 everyone?

40 MR. VOLKER: We do. While we are waiting for that
41 to be produced, we will move on to the next witness.

42 MR. SOMACH: If I could pose a question with respect
43 to relevance, so what? I don't understand the point being
44 made. Does it mean our application needs to be modified to
45 reflect the exact location of the road, and moreover, I

1 don't know that this witness has been qualified to testify
2 with respect to surveying and boundary-related issues. In
3 fact, I understand this to be a lay panel.

4 MR. VOLKER: The relevance, Mr. Chairman, is very
5 simple. The staff report and the applications both state
6 the point of diversion is in El Dorado County. That is
7 simply wrong.

8 The USGS map that has been blown up as our proposed
9 Exhibit BP-1 shows the old Wagon Road and clearly indicates
10 that the center of the highway, which is the diversion
11 works, is on the Amador County side of the county line.

12 MR. STUBCHAER: I think this could be accepted as an
13 exhibit, but not testified to as to its validity, and I
14 think we would have to establish that through an expert.

15 MR. SOMACH: Actually, if I could, Mr. Stubchaer, I
16 believe it is a legal issue. The boundaries of El Dorado
17 County are established by statute and the Government Code,
18 and that's the place that one looks to determine where El
19 Dorado County is, and it is not whatever exhibit this
20 purports to be.

21 MR. STUBCHAER: My experience with USGS maps is that
22 they are pretty accurate and you somehow have to relate
23 that exhibit to what exists in the county surveyor's office
24 as to some location on the ground. We will accept it, but
25 it is almost hearsay evidence. It won't have much weight,
26 but if you want to establish it accurately, you will have
27 to do it through expert testimony.

28 MR. VOLKER: I understand. It's such a minor point
29 we thought everyone would stipulate to it, but we will be
30 happy to bring somebody in in rebuttal, if necessary, to
31 establish that.

32 Our next witness, Mr. Chairman --

33 MR. STUBCHAER: Pardon me. At some point in time we
34 are going to have to take our break, and I was going to
35 wait until the end of the panel, but I think I prefer to do
36 it right now. We will make it just ten minutes.

37 (Recess)

38 MR. STUBCHAER: We will come back to order and
39 resume the direct testimony.

40 MR. VOLKER: Mr. Chairman, our next witness is Kirby
41 Robinson, who is President of the Plasse Homestead
42 Homeowners Association.

43 KIRBY ROBINSON,
44 having been sworn, testified as follows:
45 DIRECT EXAMINATION

1 by MR. VOLKER:

2 Q Mr. Robinson, have you examined the testimony which
3 we have marked as Exhibit 5?

4 A I have.

5 Q Is that a true and correct statement of your
6 testimony today?

7 A It is.

8 Q Would you state your name and spell your last name,
9 and give your address, your occupation and your position
10 with the protestants, please.

11 A My name is Kirby Robinson, R-o-b-i-n-s-o-n. I live
12 at 5818 Turtle Valley Drive, Stockton, California, 95207.

13 I am currently the President of the Plasse Homestead
14 Homeowners Association and I am retired Navy Captain.

15 Q Mr. Robinson, would you please summarize your
16 testimony.

17 A I represent 31 families who own property at the old
18 Plasse Homestead at the south end of Silver Lake, and some
19 of the cabins date back to the early 1930s. If I recall
20 correctly, one of them is 1926.

21 We have enjoyed this area for many many years. My
22 family goes way way back. My grandfather's sister, who was
23 Elizabeth Kirkwood, was married to Jack Kirkwood of
24 Kirkwood Meadows. So, I go back more than 130 years in
25 this property that is under discussion here, Caples Lake
26 and Silver Lake specifically.

27 We have two concerns that have been expressed by my
28 family compatriots and others here that; number one, there
29 are no hard and fast rules set in the documentation for the
30 levels of the lake which would help protect the environment
31 and which we enjoy in our summers; and second, that lacking
32 these figures of operation, we don't know what the levels
33 of the lake are going to be.

34 I looked back two years ago and saw 14 geese on the
35 wetlands of the lake right outside my cabin. Last year we
36 had 23 geese. This year we have 30. I would foresee that
37 if the lake is drawn down in the early summer, that there
38 would be no wetlands and these migrating waterfowl would
39 not be there. That disturbs me greatly.

40 I see deer crossing the meadow in the evening and in
41 the early morning hours a significant portion of the year
42 that I am up there, especially in the fall and the spring.

43 While we were out in the hallway here just a second
44 ago, as an illustration of the pleasure we derive from
45 this, I look back at my years at Stockton Municipal Camp at

1 the south end of the lake where I was a camper as a young
2 boy, and right next to the Stockton Record cabin is a
3 stream. We used to go out and dam that stream with rocks
4 and if it didn't hold water too well, we would grab a chunk
5 of soil and stick it in there, and we would have a water
6 spot to play in, and do a little bit of swimming during the
7 summertime.

8 If the lakes are drawn down, that capability will
9 disappear and we are extremely upset about this.

10 I guess that's just about it for the testimony as it
11 shows up here.

12 Q Can you describe for us briefly the impacts on your
13 use of the lake and your neighbors' use of the lake when it
14 has been drawn down in the past in the summertime?

15 A A one-foot drop in the lake at our end has a
16 significant impact. If it goes down to a gage level of
17 approximately 22 feet, we are able to put our boats in
18 comfortably at the south end of the lake. When it draws
19 down another foot it's probably 35 to 40 feet downstream
20 before we can put them in and the land in between is very
21 very muddy and subject, as John Plasse can tell you and his
22 father can tell you, to people going in with 4x4's and
23 wanting to operate, and he has to bring out the backhoe to
24 pull them out because it just won't support vehicular
25 traffic. Therefore, it makes it very difficult for us to
26 put in boats. We have to go further out for swimming.
27 Rocks and other things to damage boats are raised because
28 of the lack of water, so boating at the end of the lake is
29 very difficult.

30 The other factor is the wetlands are a tremendous
31 source for fish, and the small fish tend to grow more
32 rapidly at that end. We had a four-pound German brown carp
33 there just a week ago, and that bespeaks well for the
34 fishing at this time of the year.

35 But when the lake is drawn down it is much more
36 difficult for us to find a spot where we can fish
37 comfortably.

38 MR. VOLKER: Thank you.

39 Mr. Chairman, our next witness is John Plasse of
40 Plasse Resort.

41 JOHN PLASSE,
42 having been sworn, testified as follows:

43 DIRECT EXAMINATION

44 by MR. VOLKER:

1 Q Mr. Plasse, would you state your name and spell your
2 last name, your present occupation and your relationship to
3 the protestants.

4 A My name is John Plasse, P-l-a-s-s-e. My address is
5 P. O. Box 261, Jackson, California, 95642, and I am co-
6 owner of Plasse Resort at Silver Lake.

7 Q I would like to show you an exhibit we have marked
8 as 6 to this hearing, and ask you if it is a true and
9 correct statement of your testimony today?

10 A Yes, it is.

11 Q Would you please summarize your testimony.

12 A Well, I would like to start out by sort of
13 reiterating what everyone else has said in that my primary
14 concerns seem to be based around the lack of any specifics
15 in reference to drawdown levels of these lakes. Those were
16 my original concerns from the start, and after sitting here
17 for a couple of days in these proceedings, they have
18 heightened greatly just by evidence of the seeming lack of
19 the preliminary work that went into this project prior to
20 the filing for an application.

21 My family has been at Silver Lake probably longer
22 than just about anyone. My great grandfather homesteaded
23 that parcel up there. He had a trading post on the
24 Immigrant Trail that Mr. Rupp referenced earlier. He
25 traded with Kit Carson and anybody else that came over the
26 Carson Pass. He subsequently homesteaded a 160-acre parcel
27 at the south end of Silver Lake in 1852, and that property
28 is still owned and operated by the Plasse family.

29 He built one of the oldest log cabins still standing
30 in California, still resides on our property up there and
31 serves as the U. S. Post Office up there right now.

32 I am concerned about the fact of the drawdown to a
33 large extent due to what Kirby said in that our end of the
34 lake is a very shallow end of the lake. It was created in
35 1915, back in the time when they originally built the dam
36 on Silver Lake. It probably averages somewhere in the
37 four- to five-foot depth range at our end of the lake,
38 south end of Silver Lake most of the summer.

39 That area is very marsh like and wetland like, and
40 serves to provide spawning and nursery grounds for lots of
41 trout in those areas that use the inlet also flowing
42 through our property to move upstream and spawn and provide
43 some of the native fish to that area.

44 I am also concerned with the fact that in the last
45 100 years or so our family has consistently operated Plasse

1 Resort and it has become a vehicle by which people from all
2 over the State of California and, indeed, out of the state
3 are able to enjoy the Sierra Nevadas. There are many trail
4 heads leading back into the wilderness area that emanate
5 out of the end of Silver Lake and we literally have
6 thousands of families a year coming through and camping on
7 our property there at Silver Lake.

8 These aren't people that can fly to Hawaii or stay
9 in a condo, they are people that come up and camp in tents
10 and trailers and bring their families and enjoy a true
11 wilderness experience, being within a stone's throw of the
12 lake, camping outdoors and enjoying those sorts of things
13 that you really can't experience anywhere else.

14 They are able to fish the streams and the lake,
15 canoe on the lake, sale land so forth. And it distresses
16 me a little bit that the need for the future expansion of a
17 county is being considered to be put forth or put before
18 the already existing needs and opportunities that are
19 available to anybody to come to that area at any time.

20 If this lake was drawn down as Kirby stated, even a
21 foot or two difference in the drawdown in this lake
22 signifi-
23 cantly reduces the area at the south end of the lake as is
24 evidently reduces the area at the south end of the lake as
25 is evident in the fall of every year around the end of
26 October when PG&E does drawn down the lake at the end of
27 the year. It is nothing but a mud flat for 150 yards or so
28 before the area of the natural lake comes into play. You
29 have a 150-yard long mud flat to allow the four-wheelers
30 that are brought in, to keep out of there who tear it up,
31 so I hate to see that happen.

32 I would like to see some sort of documentation of
33 what levels will be determined to be adequate to maintain
34 the integrity of these lakes as they have been maintained
35 over the years, and I guess I feel that I speak in terms of
36 all the hundreds of families that come up every year and
37 get an opportunity to enjoy those areas, and I hate to see
38 that disappear, my family being involved in it for 130 some
39 years.

40 That's it.

41 Q When the lake is full, does it overlie your
42 property?

43 A Yes, it does. Our property line goes through a
44 portion of the south end of the lake there and it is under
45 water during that time frame. Those are areas that are

1 very marsh like and wetland like that allow for a lot of
2 spawning, the area where the geese seem to enjoy spending
3 their days up there in the summertime.

4 MR. VOLKER: Thank you. Our last witness today, Mr.
5 Chairman, is Linda Emerson. She is a member of the League
6 to Save Sierra Lakes.

7 LINDA EMERSON,
8 having been sworn, testified as follows:

9 DIRECT EXAMINATION

10 by MR. VOLKER:

11 Q Ms. Emerson, I would like to show you Exhibit 7, and
12 ask you if this a true and correct statement of your
13 testimony in this proceeding?

14 A Yes, it is.

15 Q Would you state your name, spelling your last name,
16 your address, your relationship to the protestants, please.

17 A My name is Linda Emerson, E-m-e-r-s-o-n. I live at
18 710 J Street in Davis, California. I am a member of the
19 League to Save Sierra Lakes.

20 Q And did you leave your view course to be here
21 today?

22 A Yes, I did. I took time off to be here today on
23 behalf of the League to Save Sierra Lakes because of my
24 particular concern about Lake Aloha, the centerpiece of the
25 desolation wilderness.

26 I first visited Lake Aloha in 1982, when I hiked up
27 the Pacific Crest Trail from Mexico to Canada. That is the
28 first time I had ever seen the lake and I cut my hike short
29 that day because I was so impressed with the beauty of this
30 area. I camped on the northeast shore and still remember
31 the sunsets on this day. I enjoyed the lake so much that I
32 returned to it at least six times since then.

33 Since I moved to Davis, I have been up there twice
34 on day hikes and the most recent one was last August. I
35 was up there early- to mid-August, only this time there was
36 no lake. There were a series of stagnant ponds, puddles,
37 snagged trees -- it was the first time that I had ever seen
38 diversion works up there. Quite frankly, it was the first
39 time -- I had not realized that this was -- I didn't
40 realize how shallow the lake was.

41 Given the shallowness of Lake Aloha in the late
42 season, it seemed inconceivable to me we could permit
43 additional drawdown to take place. This is a wilderness
44 area and certainly Lake Aloha would not be the destination

1 spot for backpackers that it currently is when the lake is
2 at such a low level.

3 MR. VOLKER: Thank you very much.

4 Mr. Chairman, I omitted one question during the
5 testimony of Mr. Robinson. May I be permitted to ask that
6 question?

7 MR. STUBCHAER: Sure.

8 MR. VOLKER: Thank you.

9 Q Mr. Robinson, you were on the Board of Directors of
10 the 49er Council of Boy Scouts of America?

11 MR. ROBINSON; A Yes, I am.

12 Q Would you briefly tell us what impact a drawdown of
13 the lake would have on use by Boy Scouts of the lake?

14 A I might take just a second to say that the 49er
15 Council of Boy Scouts bought Camp Minkalo which was a
16 Campfire Girls camp leased to them way back in 1922. In
17 1990, the Boy Scouts acquired this property and expanded it
18 to almost double its size and they are making a sizable
19 investment in that property. They have approximately one-
20 third of a mile of shoreline. Their program during the
21 summer addresses approximately 140 campers gaged to the boy
22 who is 13, or first class scout, up to 17 and 18.

23 It was just dedicated by the National Council of the
24 Boy Scouts as a high adventure base camp, one of seven or
25 eight throughout the country, which provides unique
26 opportunities for the boys, as does Trailmount in New
27 Mexico. That is the closest high altitude camp to this one
28 in the United States.

29 Two-thirds of their program is water oriented,
30 boating, fishing, swimming, snorkeling, those kinds of
31 activities, training for life guards and similar
32 activities.

33 The other portions are those related to hiking,
34 repelling, mountain hiking and camping out, and access to
35 the wilderness area.

36 Any kind of drawdown of the lake would have a
37 serious impact on their ability to provide these
38 recreational capabilities to the youth that they serve, not
39 only in California, specifically our Council of 7,000 boys,
40 but to scouts throughout the United States. And we do have
41 scouts coming from other parts of the country already, even
42 though the camp has only been in being and is still in
43 nominal operation.

44 MR. VOLKER: Thank you, Mr. Robinson.

1 Mr. Stubchaer, I would like to move into evidence Exhibit 1
2 through 7, the testimony of the witnesses you have just
3 heard, and also move into evidence Exhibit BP-1, Brad
4 Pearson No. 1, which is the map of the County lines. It is
5 a USGS map blown up.

6 MR. STUBCHAER: Just for clarification, this is a
7 copy of a public record map?

8 MR. VOLKER: Absolutely.

9 MR. STUBCHAER: And on this map the County line is
10 not identified. It will be accepted for purposes of
11 illustration only, and as I said earlier, if you want to
12 define the County line, you can do it later.

13 MS. KATZ: Can I clarify --

14 MR. VOLKER: I'm sorry, I have been corrected. If
15 we could Xerox the legend, the legend indicates the County
16 line is a dashed line which we have marked with blue
17 overlay on the large blowup.

18 MS. KATZ: Are you asking that the large blowup be
19 an Exhibit?

20 MR. VOLKER: Yes, but you can also see that line on
21 the smaller one.

22 MS. KATZ: I just wanted to make it clear when you
23 are talking about the blueline that is on that map and not
24 on --

25 MR. VOLKER: That is right.

26 MR. STUBCHAER: All right, we will rule on your
27 motion after cross-examination.

28 MR. VOLKER: Fine, thank you.

29 MR. STUBCHAER: Any party wish to cross-examine this
30 panel?

31 All right, Mr. Somach.

32 CROSS-EXAMINATION

33 by MR. SOMACH:

34 Q Mr. Turnbeaugh, you are the director of Public Works
35 and County Planner for Alpine County?

36 MR. TURNBEAUGH: A Correct.

37 Q You have used the term *drawdown* throughout your
38 written and your verbal testimony. Can you tell me what
39 the term *drawdown* means?

40 A To me, the term *drawdown* means taking water out of
41 the lake and starting to lower the level of the lake.

42 Q It is the physical act then of taking water out of
43 the lake which results in the lowering of the lake; is that
44 correct?

45 A Correct.

1 Q And that's the way you have been using it here?

2 A Yes.

3 Q What physical act of El Dorado are you talking about
4 when you talk about El Dorado's drawdown of the lake?

5 A The physical act I am talking about is El Dorado has
6 applied for consumptive use of all the water in the lake
7 and it is my understanding that that would mean giving them
8 the right to take that water out of the lake, and when you
9 take 21,581 acre-feet of water out of a lake that contains
10 21,581 acre-feet, you have, in effect emptied the lake.

11 Q And that's the reason for asking what you meant by
12 drawdown. The environmental document, and in fact, the
13 testimony -- were you here for the testimony of the El
14 Dorado witnesses?

15 A Yes, i was.

16 Q Was there any testimony given there t hat they
17 intended to take water out of the lake or was that
18 testimony that they intended to diversion water once it was
19 released from the lake by PG&E?

20 A The testimony, I believe, was once it was released
21 by PG&E. however, you are asking for a consumptive use and
22 PG&E has a non-consumptive use, and it is not clear to us
23 by any document that has been presented as to how those
24 relate to each other.

25 Q So, you contend then that El Dorado has the ability
26 to operate PG&E's lakes?

27 A I think that through your applications, you will
28 ultimately, or have the potential of taking over PG&E's
29 operations under its FERC license and in the future, by the
30 year 2020, of taking water out of those lakes.

31 Q So, you are protesting here some potential future
32 action; is that correct?

33 A We have only heard verbal comment to our concerns
34 regarding the applications' consumptive use of the water.

35 Q Well, are you familiar with, and did you see the El
36 Dorado County Water Agency Exhibit No. 69?

37 A Yes, I did, when it was passed around Monday.

38 Q Could I hand you a copy of that now. Now, when you
39 talk about verbal assurances, you have read the
40 Environmental Impact Report for the project and taken a
41 look at the applications; is that correct?

42 A Yes.

43 Q Isn't it true that those documents describe the
44 operation of this project as one where El Dorado will rely
45 upon releases from those lakes that are made by PG&E?

1 A When the question has been asked of El Dorado, what
2 if there is no PG&E, there has never been a response.

3 Q I don't understand what --

4 A Who, if the Agency that controls those lakes is not
5 PG&E?

6 Q But isn't the existing situation upon which the
7 permit is being applied for one that has PG&E owning and
8 operating those facilities?

9 A PG&E, again, in our view, is a non-consumptive use.
10 The application here is for consumptive use. PG&E is
11 regulated by FERC to leave a minimum pool of 2,000 acre-
12 feet in those lakes. Your application does not leave a
13 minimum pool. There is application for all the water in
14 the lakes.

15 What happens to the 2,000 acre-feet?

16 Q Let me ask you, is it not true that you have, on
17 behalf of Alpine County, applied for all of the water in
18 Caples Lake?

19 A Yes, we have, for recreational purposes.

20 Q Well now, that's not exactly true; is it? I mean --
21 I am reading from your testimony and you said the use
22 intended for this water include recreation, fishery uses,
23 county development, and domestic, commercial and industrial
24 use. Isn't that what your application for all of the water
25 in Caples Lake is for?

26 A Yes, for our economy. As I said in my oral
27 presentation, that we view tourism as an economy.

28 Q For an economy of Alpine County; is that correct?

29 A Correct, and the Highway 88 corridor.

30 Q Mr. Rupp, do you intend to in any way, shape or
31 form, protest the application of Alpine County for the
32 water that it is appropriating out of Caples Lake?

33 MR. RUPP: A My understanding of Alpine County's
34 application is for recreational use and only a small
35 portion, 7 percent of that lake, for residential,
36 commercial and industrial use. In other words, they are
37 not applying for the entire capacity of the lake. That
38 would leave certainly the pool and the recreational value
39 that would exist, but when someone is coming along and
40 applying for the entire lake, we envision it being taken
41 out to the destruction of the fishery when you bring that
42 water down, and you no longer leave oxygen content for the
43 wintertime.

44 Q Well, 7 percent diversion is not going to draw down
45 the lake?

1 MR. TURNBEAUGH: A The number for consumptive use
2 from our standpoint is 6-1/2 acre-feet, three-tenths of one
3 percent of the volume of the lake.

4 Q Will that have a drawdown effect?

5 A That is not considered to be significant, three-
6 tenths of one percent.

7 Q Is the impact of El Dorado County's proposed
8 diversion in light of the fact that it is intended to be
9 merely a diversion of whatever PG&E releases that
10 significant? Is there an incremental difference between
11 what PG&E has historically been doing and what El Dorado
12 will be relying upon?

13 A Potentially we believe that there will be. As I
14 stated in my oral testimony, again, that as you change the
15 use and as you have people in El Dorado County relying on
16 that water for domestic purposes, wherein PG&E in the past
17 has been using it for non-consumptive use and you are
18 taking it for consumptive use for approximately 115,000
19 additional people, that all of a sudden Alpine County and
20 the fishery of that lake will become then probably a second
21 or third order of priority. Once that lake is drained
22 down, you will not be able to re-establish that fishery.

23 Q Isn't there a similar concern with respect to
24 reliance by Alpine County on the water that it is
25 appropriating?

26 A We feel our application for the water is to protect
27 the fisheries, the wildlife and the economy of the Highway
28 88 corridor, Caples Lake area, and that working with PG&E
29 and their continual drawdown, they do not have this
30 consumptive use mandate that they are trying to place on
31 the lake.

32 Q I understand that, but you are going to be placing
33 some consumptive use mandate on the lakes; isn't that
34 correct?

35 A Not 21,581 acre-feet.

36 Q But you have filed for an application for 21,000
37 plus acre-feet of water?

38 A Not for consumptive use.

39 Q Mr. Rupp, isn't it true that in addition to your
40 concern about water in the lake, you also believe that
41 water must be used, in fact, consumptively? In fact, isn't
42 it your testimony, and I am quoting here, that water is
43 also needed for Kirkwood Community to develop to the extent
44 of the existing master plan and to remit its Alpine ski
45 facility to make snow?

1 MR. RUPP: A I guess it is. This is a county or
2 origin for these waters and I certainly, you know -- I am
3 pretty naive in this operation, but from what I have read
4 the county of origin has more value, more weight than a
5 county that is downstream, and this is the area of origin
6 of these waters, and it would seem reasonable that the
7 origin should have higher priority than a downstream user.

8 I don't know. I am no expert. Others in this room
9 certainly are.

10 Q Your answer is fair, but let me then ask from your
11 view, it is okay for Alpine County to develop a domestic
12 water supply for these sources in order for it to develop
13 to the extent of its existing master plan; is that correct?
14 Is that an appropriate reason to divert water?

15 A Personally, I would have a conflict if it was of a
16 greater value. In other words, I think there is a limiting
17 factor on whatever you do.

18 Q But nonetheless, that's an accurate statement; is it
19 not?

20 A If you are taking all the water out of the lake,
21 this is significantly adverse. If there is a small amount
22 to sustain the community, I think that's reasonable. This
23 is where we live.

24 Q Mr. Plasse, you indicated that what you really
25 wanted, if I understand you right, is to have the lakes and
26 -- I tried to write this down when you said it and I am not
27 sure I got it exactly right, but have the lakes maintained
28 as they have been maintained over the years? Is that an
29 accurate paraphrase?

30 Do you want to tell me what you meant when you made
31 that type of statement?

32 MR. PLASSE: A When I made that statement, what I
33 meant was that I want the lakes to be used for the power
34 generating use they have been used for in the past and not
35 to suffer any lower elevation levels than they have ever
36 suffered in the past just through natural means.

37 Q Now, were you here for prior testimony, or did you
38 just come in today?

39 A I have been here just for partial points.

40 Q Did you hear any of El Dorado's testimony?

41 A Some.

42 Q Did you read the EIR that was prepared for this
43 project?

44 A No, I have not.

1 Q Did you take a look at the hydrologic analysis that
2 was done which is Appendix A to the final EIR associated
3 with historical lake levels?

4 A No, I have not.

5 Q So, you are not certain whether or not the El Dorado
6 project contemplates continued operation of those lakes as
7 they have been maintained over the years or not; do you?

8 A I think your choice of terminology there,
9 *contemplates*, is an interesting one in that twice in my
10 listening to the testimony here of both PG&E and of SMUD, I
11 have heard the term *contemplate use*, and the fact that El
12 Dorado County has filed this application based on an
13 agreement to agree with PG&E on how things would be
14 operated, or agreement to agree with SMUD on how SMUD and
15 El Dorado will operate, but my main concern is until there
16 is specifics as to how many acre-feet when and for what
17 uses those waters would be drawn down, I oppose this
18 application.

19 A If I indicated to you that those specifics were
20 contained in the EIR in terms of how it is to be operated,
21 you would not be able to tell me whether or not that was
22 true or not because you haven't read that document --

23 MR. VOLKER: Objection, calls for speculation. This
24 is not an expert witness. That's a hypothetical question.

25 MR. SOMACH: Q Well, have you read the EIR?

26 A I believe I already answered that.

27 Q So, you can't tell me whether or not that document
28 explains how the project would be operated?

29 MR. VOLKER: Asked and answered, argumentative.

30 MR. SOMACH: I think I am entitled to a yes or no
31 answer.

32 MR. STUBCHAER: You may say, can you tell me how the
33 project would be operated.

34 MR. SOMACH: Okay, that's fine.

35 A What was that again?

36 MR. SOMACH: Q Can you tell me how the project will
37 be operated?

38 A The water project?

39 Q Yes, El Dorado County Water project.

40 A No, I cannot. Can El Dorado County tell the Board
41 that?

42 MR. STUBCHAER: He is asking the questions.

43 MR. SOMACH: In all candor, sir, I believe that they
44 have. I believe that the Environmental Impact Report,
45 which we have read, explains it, and I certainly do believe

1 that the Board has all that and I hope that they will take
2 a look at it and that there are not balls being hidden here
3 and everything is, in fact, out on the table.

4 Ms. Emerson, I notice from your testimony, that your
5 written testimony, which is similar to your verbal
6 testimony, that you have some concern about additional
7 drawdowns of the lake.

8 Do you understand the El Dorado project being
9 proposed by El Dorado County and El Dorado Irrigation
10 District to be based upon additional drawdowns?

11 MS. EMERSON: A I understand that El Dorado County
12 has filed an application to appropriate additional water
13 out of Lake Aloha.

14 Q When you say additional water, are you talking about
15 water in addition to what PG&E is releasing?

16 A Yes.

17 Q What if, in fact, all that El Dorado was attempting
18 to do was to merely divert that amount of water that PG&E
19 did release as it has over the years?

20 A Are you saying you would not be diverting any
21 additional water other than what you are currently
22 diverting?

23 Q Other than what PG&E is currently releasing.

24 A My position is that historical operations are
25 already at that level where it has allowed virtually
26 draining of the lake, and I think that anything that would
27 jeopardize the lake further, anything that could
28 potentially decrease the amount of water in Lake Aloha,
29 should not be permitted.

30 Q Well, would relying upon what was currently
31 occurring and has historically occurred there be an
32 additional drawdown? I really was focusing on your
33 testimony as much as anything. I wanted to understand what
34 the substance of that concern that you draw is.

35 A The substance of the concern is that any additional
36 water that would not be in the lake is my concern. Are you
37 saying that the lake would be exactly as it is with no
38 changes?

39 Q What I am saying is the project contemplates making
40 no changes to PG&E's operations, that it merely relies upon
41 whatever PG&E releases and takes it after it has been
42 released.

43 Now, is that what you were talking about when you
44 talked about additional drawdown?

1 A No, I am talking about additional water being taken
2 out of the lake.

3 Q Okay. Mr. Pearson, you talked a bit about -- you
4 were running through witnesses so quickly, it was difficult
5 for me to get this entirely straight, but I believe there
6 was some discussion about fishery releases. Were you the
7 individual that spoke about those increased releases in the
8 future for downstream fishery purposes?

9 MR. PEARSON: A Yes.

10 Q Do increased fishery releases for downstream
11 purposes have the effect of drawing down lake levels?

12 A They can.

13 Q And does it matter to your operation whether or not
14 lake levels are drawn down because of PG&E's operations, or
15 because of the need to have more water downstream for
16 fishery purposes?

17 A Any drawdown of the lake for any reason can affect
18 operations on the lake of cabin owners, resort owners,
19 people that are just casually using it.

20 MR. SOMACH: I have no further questions.

21 MR. STUBCHAER: Mr. Gallery.

22 CROSS-EXAMINATION

23 by MR. GALLERY:

24 Q I will just pose the question generally to those on
25 the panel, so anyone who feels qualified can answer.

26 It's been clear from the testimony presented that El
27 Dorado contemplates an agreement with PG&E to utilize this
28 water for consumptive use, and I want you to assume that
29 that agreement would probably provide the amount of water
30 that El Dorado could take out of the PG&E power releases
31 and when it could take the water, how much advance notice
32 that PG&E would need before the water could be taken, and
33 that the agreement might in some way affect how PG&E would
34 then operate its system with this agreement in place, which
35 could perhaps be different than what they are operating
36 now.

37 We don't know because we don't have an agreement,
38 and that it could be called an operating agreement, which
39 is the term that is used in the SMUD Exhibit 13-A; now the
40 question is, which of you feel that that agreement ought to
41 be before the Board for evaluation by the Board and by
42 yourself before you can determine the effects of this
43 project?

44 MR. RUPP: A I certainly feel totally inadequate to
45 evaluate what has been presented without all of the

1 information. There was one thing I included in my
2 testimony that was, if I may quote out of the EIR and the
3 final EIR, the question was asked, is it possible in terms
4 of the FERC license to have a change in timing without
5 having timing determined to be substantial reoperation, and
6 the response was, and this is on page 6.19: *Under FERC*
7 *Permit 184, PG&E has flexibility within the confines of the*
8 *terms of their permits. As such, PG&E could change the*
9 *timing of the release, and without the change in timing,*
10 *would not be considered to be a substantial reoperation*
11 (sic).

12 So, we need more information to make any kind of a
13 judgment.

14 Q And I take it, Mr. Turnbeaugh, your response would
15 be along the same lines?

16 MR. TURNBEAUGH: A Along the same lines, except I
17 would want input or documentation as to the foregone power
18 aspects. If PG&E were to be paid for loss of power, what
19 then would that do to the taking of water?

20 Q Mr. Plasse.

21 MR. PLASSE: A I, too, would feel much more
22 comfortable with the terminology of *historical* more clearly
23 defined. I think by the very nature of the fact that you
24 use the term *historical*, you obviously must have some way
25 of determining what historical is.

26 So, if there is a way of measuring historical, then
27 there is a way of measuring the specific in whatever
28 additional, and whatever additional you want to measure in
29 acre-feet or cubic feet per second, or whatever, there's
30 got to be some way of measuring what historical has been
31 and how it may be affected by whatever future agreement
32 that PG&E enters into with El Dorado County Water Agency;
33 and the fact that they are contemplating these agreements,
34 and yet, have not reached them, disturbs me.

35 Q Mr. Zuckerman, you raised your hand.

36 MR. ZUCKERMAN: A Many of you will recognize that I
37 have considerable experience in these matters on different
38 subjects and so forth before the Board.

39 Let me just summarize that by saying I think it is
40 unconscionable that this application can go forward without
41 the specifics of the operating agreement being before the
42 Board. There is just too much latitude for operating,
43 conspiracies, if you will, between the two parties in light
44 of the demonstrated importance of the values of these
45 watersheds to the broad population, to be trying to make a

1 decision without having the details of that squarely before
2 the Board and before the protestants.

3 And I could go on at great length as to the analysis
4 I would make. I think some of them have been alluded to
5 before. The Board is asked to sit, you know, on very
6 important issues where for one reason or another the
7 economies have been allowed to develop without completely
8 firm water permits, and then face the onslaught of problems
9 from the people who have sited themselves in houses that
10 are dependent upon these incompleated water rights
11 applications, and I think that I understand the serious
12 problems they have in trying to deal with that.

13 And given the opportunity, I think you probably
14 would go back and try to clarify some of those water rights
15 that were allowed to be issued conditionally without really
16 determining what was going to happen in the future. I
17 suspect that you will not want to and probably won't make
18 that same mistake again.

19 Thank you.

20 Q Mr. Robinson.

21 MR. ROBINSON: A I would still like to hear what
22 the term *historical* means. Does it mean taking the year
23 1944, 1934, 1977, as the historical level of the lake?
24 That has no meaning to me at all. I want specific levels
25 designated if somebody is going to draw down the water.

26 Q Just a couple more questions.

27 Mr. Turnbeaugh, in your testimony reference is made
28 to the fact that Alpine County has filed to appropriate the
29 water in Caples Lake for recreation, and also for some
30 domestic use.

31 Has Alpine County also filed a petition for a
32 partial assignment of the same State filing that El Dorado
33 has asked for?

34 MR. TURNBEAUGH: Yes.

35 Q And then, the last question is to Mr. Pearson. Mr.
36 Robinson and Mr. Plasse, I understand, are at the south end
37 of Silver Lake, and is your resort at the north end or near
38 the highway?

39 MR. PEARSON: A That is correct, the north end,
40 fairly close to the highway.

41 Q I wondered if you could briefly describe the lake
42 levels, different lake levels in terms of how recreation or
43 use of the lake is affected up at your end?

44 A At our end of the lake, there is a good deal of boat
45 launching that is done. It is the deeper end of the lake.

1 We don't have a long, narrow shelf that is at Plasse's end.
2 A number of the swimming beaches are at the northern end of
3 the lake.

4 Sandy Cove, which is operated by PG&E, is the major
5 public swimming beach. When lake levels get below, in the
6 neighborhood of 18 feet, that cove starts to cease to be a
7 cove and becomes a long, thin finger of water and
8 eventually is lost. Oftentimes in August Sandy Cove is no
9 longer a cove, which means Sandy Cove beach is no longer a
10 public beach because there is no reason for people to be
11 there if there is no water there.

12 On our particular beach, and in our boat ramp or
13 boating docking area, when we go below 17 feet, we find
14 that our boat dock is sitting on sand which means we can't
15 use it to launch boats. Our beach becomes exposed rocky
16 areas. Our swimming platform is sitting on the ground, and
17 in essence, when the water temperatures of the lake begin
18 to hit 70 degrees, which typically happens in the first
19 week of August and when it is very swimmable, we don't have
20 swimming areas for the guests of the lodge.

21 There is a point which is also operated by PG&E
22 where the same thing happens. We begin to lose recreation
23 opportunities as lake levels go down.

24 MR. GALLERY: Thank you. Those are all my
25 questions.

26 MR. STUBCHAER: Thank you.

27 Mr. Jackson.

28 CROSS-EXAMINATION

29 by MR. JACKSON:

30 Q This question is for Mr. Zuckerman simply because I
31 know his knowledge in this area.

32 Mr. Zuckerman, have you had a chance to look at this
33 operation, page 18, from the 1969 Department of Fish and
34 Game report by Robert Gervais, indicating how PG&E has
35 historically operated this --

36 MR. ZUCKERMAN: A I have not.

37 Q I will come back to you.

38 A Okay.

39 Q I believe it is Ms. Emerson. You and I evidently
40 have had the same experience of arriving at Lake Aloha find
41 it gone.

42 MS. EMERSON: A Yes.

43 Q What time of the year does it usually happen?

1 A I am not sure. Last year was the first time I had
2 ever been up to the lake when it looked like that. That
3 was early to mid-August.

4 Q Have you had an opportunity to take a look at Fish
5 and Game's analysis of the 1969 operation of PG&E's El
6 Dorado project?

7 A No, I have not.

8 Q I will go on to Mr. Pearson. Mr. Pearson, you have
9 been familiar, I guess, for many years with Silver Lake?

10 MR. PEARSON: A For the last seven years, I am.

11 Q I am confused and maybe you can help me. There is
12 an indication that El Dorado currently takes through a 1919
13 agreement, 5,000 acre-feet per year from Silver Lake. Do
14 you know anything about that?

15 A I know there is an agreement to that effect where
16 they can take out 15,080 acre-feet of the system; 5,000
17 acre-feet is under, I believe, an 1886 water right that
18 comes from Silver Lake.

19 Q And El Dorado has now applied for an additional
20 6,000 acre-feet from Silver Lake, and I guess my question
21 is, how big is Silver Lake?

22 A Silver Lake, what's painted on the dam is the high
23 water mark that is considered maximum water surface
24 elevation the way it is labeled, I believe is at elevation
25 22.7. That's a capacity of 8,590 acre-feet, which is
26 contained in the FERC license as the capacity of Silver
27 Lake.

28 It is possible to operate Silver Lake at a little
29 bit higher level with flashboards, but we find that in
30 looking at the PG&E data submitted to the USGS over the
31 last, well, since 1979, there is something like 42 days in
32 that time period of the available data where the lake has
33 been operated above 8,590. That's daily data.

34 Q Can you tell me how you get -- I mean, my map is at
35 5,000 and 6,000 is 11,000 acre-feet. The lake isn't that
36 big; is it?

37 A It's impossible to get much from the lake as far as
38 we can tell without raising the dam.

39 Q Now, there are also fish flows that come out of that
40 lake; are there not?

41 A That's correct. It is our understanding that the
42 minimum fish flows which were established in 1986, I
43 believe, in the FERC license amendment, were set at two
44 cubic feet per second continually throughout the year as a
45 minimum. There are times when higher fish flows may be

1 released by PG&E, but that equates to something in the
2 neighborhood of 1450 acre-feet a year minimum fish flows at
3 two cubic feet per second.

4 Q What would be the existing condition for the home
5 owners of Silver Lake if 5,000 acre-feet that El Dorado
6 currently takes out of Silver Lake, 6,000 feet that they
7 are applying for here on the basis that PG&E has that much
8 non-consumptive capacity, so they want consumptive capacity
9 plus the fish flows of 1450. I come up with a total draw
10 on the lake of 12,500 acre-feet a year. What would that do
11 to your lake?

12 A Devastate the lake. To give you an example, in
13 1988, which from my verbal testimony I cited as being a
14 year that was not a good year, but nowhere nearly as bad as
15 the threshold year of 1977, in 1988, something in the
16 neighborhood of 6,600 feet were discharged over the 12-
17 month period of that water year. This is per PG&E's daily
18 logs on Silver Lake. You start subtracting from that the
19 fish flows that can't be used consumptively, you start to
20 get down to some pretty low lake levels, and we don't see
21 how the project can meet its target of 5,000 acre-feet from
22 the 1919 agreement, let alone the additional 6,000 acre-
23 feet.

24 Nothing has been presented to this point on how this
25 safe yield can be subtracted from this lake, and the same
26 figures for that year basically to Caples Lake.

27 When you look at the fish flows of 5 cubic feet per
28 second, only 9,000 acre-feet were discharged during that
29 12-month water year from Caples Lake, and yet the
30 application on this lake was for 21,000 acre-feet. The
31 match doesn't add up. The figures haven't been presented.
32 It's not in the environmental information.

33 Q but clearly, the lake is only 8699 acre-feet?

34 A That's correct. That's stated in the FERC license
35 and it shows on the maximum water surface elevation on the
36 dam.

37 Q Thank you, sir.

38 Mr. Zuckerman, have you had a chance to take a look
39 at the document?

40 MR. ZUCKERMAN: A I have.

41 Q Calling your attention to your knowledge of the area
42 around Silver Lake and assuming that this document does
43 reflect the historical operation of PG&E, is it true that
44 there are extensive private and public recreational
45 developments which require high lake levels all summer?

1 A Yes.

2 Q Is it true that on Silver Lake and Echo Lake that
3 these homes are inaccessible except by very long trails if
4 the water level is down to almost nothing?

5 A I know that's the case on Echo Lake.

6 Q That is not the case, however, on Silver?

7 A There may be some.

8 MR. ROBINSON: A There are six cabins between Kay's
9 resort at the dam and the National Forest Service property
10 on the west side of the lake, which is toward Plasse's end,
11 and excess by Plasse Road. There are seven lots there and
12 there are six homeowners of those seven lots. The only way
13 they can have access to their lots is by water.

14 Q So, when there is no water, they are essentially out
15 of luck?

16 A It's a very very difficult hike in and there's no
17 way that they can carry in propane tanks or something of
18 this nature if they so need.

19 Q No access by emergency service?

20 A Absolutely none to those six lots. It's all by
21 water.

22 Q Are you familiar with Echo as well?

23 A No, I am not.

24 Q Is anybody here familiar with Echo Lake?

25 MR. ZUCKERMAN: A I have been there and I recognize
26 the situation of the people on the upper lake are pretty
27 much dependent on water transportation to get to their home
28 sites.

29 Q Without the water transportation, essentially
30 getting to their homes is very difficult or almost
31 impossible.

32 A It's a long hike. This young lady would be able to
33 make it. I am not sure I would.

34 MR. SOMACH: I made it.

35 MR. ZUCKERMAN: I did, too.

36 MR. JACKSON: Q Again, Mr. Zuckerman, calling your
37 attention to this document, it indicates that there are
38 four factors that cause variation in the extent of water
39 diverted on a monthly basis throughout the year.

40 MR. ZUCKERMAN: A Yes, I noted that.

41 Q Is that one of the things that you are worried
42 about?

43 A Yes. I presume there is a good deal of operating
44 flexibility on PG&E's part in the way it likes to utilize
45 the power generating capacity of that water, together with

1 these other needs that it is trying to juggle, and that's
2 what I was referencing earlier that I am sure that there is
3 a lot of room in there for the demand of the El Dorado
4 Irrigation District to influence adversely from our point
5 of view the recreational uses of the water in the
6 reservoirs.

7 Q This document seems to indicate that one of the
8 reasons for variation or changes is the water needs of El
9 Dorado Irrigation District.

10 A Exactly.

11 Q And that's for irrigation. Do you expect that there
12 would be more requests for variation if there was a drought
13 and you were trying to deal with an extra 115,000 people?

14 A I doubt that that flexibility is limited just to
15 irrigation, but even if it were, under the type of
16 development that El Dorado Irrigation District is proposing
17 to be served by this water development, those demands tend
18 to become rather structured and rather fixed.

19 And I would assume there would be a good deal of
20 pressure on PG&E and perhaps a legal obligation on their
21 part to modify their operations to serve the domestic as
22 well as irrigation uses that are developed.

23 Q In terms of your examination of this operation, is
24 this operation described in the Gervais document, the
25 Department of Fish and Game report from 1969, consistent
26 with what you have seen happen at Silver Lake?

27 A Well, you know, what I see at Silver Lake is water
28 being released. I don't know where it is being released,
29 but the timing of the releases is consistent with what I
30 have observed in the past.

31 I might say that over the last several years
32 conditions have been quite a bit different in the Sierras,
33 not just in Silver Lake, but Caples Lake, Tahoe, you name
34 it, and so I may be somewhat influenced by what I have
35 observed during the drought years.

36 But I think the general attitude is that people in
37 the area are not insisting that God provide the same amount
38 of water every year. I think we are willing to live with
39 some variations that are caused, you know, by nature, but
40 what we wouldn't want to see is exacerbation of that
41 condition by a need to serve a growing community
42 downstream.

43 Q Now, calling your attention to the last sentence in
44 the operation part of this document, it says in actuality,
45 the use of storage water from project reservoirs, and this

1 is talking about the PG&E project, the use of storage water
2 from project reservoirs may vary from this plan as much as
3 six weeks depending on the project.

4 A I noticed that.

5 Q Or type of water year. Now, if, in fact, it was six
6 weeks before Labor Day when they began to draw down Silver
7 Lake, what would happen to the economy of that area?

8 MR. PLASSE: A It would totally devastate the
9 operation of the resorts on Silver Lake on one of the
10 biggest weekends of the entire season. We have a very
11 short season up there. This year we will hopefully open
12 next week, so we are looking at about a two- to three-month
13 total operations, and without Labor Day --

14 Q Now, in fact, you are opening next week because of
15 the elevation and because of the water year, and you are
16 closed down essentially by the withdrawal of water six
17 weeks earlier than the schedule listed here, that would be
18 six weeks before Labor Day.

19 What effect would that have on your business?

20 A It would not be economically feasible to open it for
21 four weeks.

22 MR. RUPP: Could I comment from a different point of
23 view? I think the comments are being elicited in terms of
24 the commercial aspect of the drawdown; in other words, as
25 it would affect the commercial business, but from my point
26 of view and that of our broad-based population, you
27 certainly have a much broader concern if you have that
28 drawdown four weeks early.

29 In other words, this is the mom and pop and kids
30 going camping that no longer have that experience. These
31 are the people that are going out to hike and to look at
32 the vistas and looking back in that area no longer have
33 that kind of experience.

34 From my prejudiced point of view, notwithstanding
35 any members on this panel, the commercial aspect is only a
36 small facet of it. It's the broad-based population that
37 would be restricted by that kind of operation.

38 Q Mr. Turnbeaugh, you brought up the idea that
39 essentially Alpine County is where the rain falls. You
40 consider you are a county of origin; right?

41 MR. TURNBEAUGH: A Yes.

42 Q And what use does your county of origin make of the
43 water that presently falls and runs into Caples Lake?

44 A Our primary use is the tourist industry. We are,
45 you know, in effect, I guess entertainment, where the

1 people from this area and the Bay area come directly for
2 their weekends and vacations, and our economy is based on
3 that recreation. They come for the sight seeing, they come
4 for fishing, boating, camping, photography, hunting. It's
5 recreation oriented, outdoor -- we have it.

6 Q Now, assuming that all of the information which El
7 Dorado County put on about their taking water away from the
8 Bureau, that they are arguing that counties of origin get
9 to take water away from the Bureau, but then they are
10 turning around and taking water from your county of origin
11 as well; are they not?

12 A Yes.

13 Q Would you suffer both economic and sort of personal
14 damage to your county citizenry if this happens?

15 A I believe we would. If I could give an example, a
16 couple of years ago the Department of Fish and Game had to
17 reduce the fish planting program in Alpine County because
18 of the higher water temperature coming out of the Nimbus
19 Dam and this was the result of the releases that were
20 coming out of Folsom, having to release water there and
21 through Nimbus, what it was doing was raising the water
22 temperature, putting the fish in the fish hatchery below
23 Nimbus in distress.

24 they then, basically, took those fish and planted
25 them, or opened the gates and let them go because they
26 could not truck them to Alpine County because they were
27 overstressed.

28 Q I guess this is for anybody who wants to answer it.
29 As read from the Gervais report, Mr. Zuckerman, if, in
30 fact, this operation is run with the flexibility described
31 here, six weeks one way or the other, do you believe that
32 that area would be massively affected by this kind of
33 operation?

34 MR. ZUCKERMAN: A It certainly could be. I am not
35 here to criticize the way PG&E has run its operation in the
36 past. I think they have been sensitive to the needs of the
37 area. What I am concerned about here is developing another
38 demand, a greater demand, that makes it more difficult for
39 them to meet the needs in the area.

40 And before considering that, I would think that the
41 Board would want to carefully consider some sort of
42 operating schedule that would limit the impact of that type
43 of domestic development upon the demands on those
44 resources, is what I am really saying.

45 Q One more question, if I can, Mr. Stubchaer.

1 who has inspected the diversion facilities who can attest
2 to the fact they are on the Amador County side of the old
3 Wagon Road. I think this testimony will help authenticate
4 and make relevant the exhibit that we have.

5 MR. STUBCHAER: I think you have to qualify the
6 witness before we could accept that testimony.

7 MR. SOMACH: He has been offered specifically as a
8 lay witness.

9 MR. VOLKER: Well, a lay witness can testify as to
10 matters within his experience and knowledge. In this case,
11 he has experience with regard to the location of the old
12 Wagon Road, and with regard to the diversion structure we
13 may need another witness to authenticate the USGS map
14 perhaps.

15 MR. STUBCHAER: Yes, you have to authenticate that
16 is the old Wagon Road that is shown on the map and the
17 county line is where it is shown. Even though he
18 testifies, I don't think it will make it evidence it can be
19 considered other than illustrative.

20 MR. VOLKER: If I can at least have the answer, we
21 will be one step farther down the pathway.

22 May we have an answer to the question?

23 MR. SOMACH: I renew my objection.

24 MR. STUBCHAER: He may answer the question, but the
25 weight will be based upon the qualifications and
26 statements, I think.

27 MR. VOLKER: Thank you.

28 MR. PEARSON: A Yes, as far as I can tell by
29 personal observation, the Wagon Road is downstream of the
30 dam face, of the diversion works.

31 In talking with the county surveyor, the Wagon Road
32 is the county line and there is no other documentation
33 other than the USGS maps as to the location of the county
34 line.

35 MR. VOLKER: Thank you, Mr. Pearson.

36 Mr. Stubchaer, I renew our request --

37 MR. STUBCHAER: Now we have the cross. Since we had
38 redirect, we can get recross. Anyone wish to have
39 additional cross-examination?

40 I guess not, so all right.

41 MR. SOMACH: Again, I want to renew my objection to
42 the context of this testimony being outside of any
43 testimony that had previously been submitted. It is;
44 number one, surprise testimony; number two, the expert was
45 not qualified to testify and as a consequence, I don't feel

1 that I have had an adequate opportunity to be able to
2 really review the information as provided to determine
3 whether or not to cross-examine.

4 MR. STUBCHAER: Your objections are noted, and as I
5 said, I think very little, if any weight will be given to
6 this evidence.

7 All right, you may reoffer the exhibits.

8 MR. VOLKER: Yes, we reoffer our exhibits, which are
9 1 through 7, the testimony of the seven witnesses, and BP-
10 1, which is the map of the Silver Lake diversion structure
11 and county line downstream.

12 MR. STUBCHAER: All right. Do those numbers check
13 with --

14 MR. SOMACH: I object to the introduction of the
15 testimony as evidence. I have no objection to the
16 introduction as a policy statement on the part of the
17 people that prepared them, and I renew again my objection
18 to the introduction of the map as not being previously
19 submitted as well as having no foundation really laid in
20 the context of what it purports to indicate.

21 MR. STUBCHAER: I agree that there has been little
22 foundation. We don't know the date of the map, things like
23 that, but it is a USGS map which is a public document, and
24 as far as your first objection, you wanted all of this
25 considered as policy statements.

26 MR. SOMACH: All of the written testimony that they
27 are trying to now introduce as exhibits, I believe those
28 are policy statements and not evidence of any facts.

29 MR. STUBCHAER: Are you referring to written
30 evidence other than what was distributed to the parties?

31 MR. SOMACH: No, I am talking about the written
32 statements that Mr. Volker is attempting now to introduce
33 as evidence.

34 MR. STUBCHAER: All right.

35 MR. VOLKER: Mr. Chairman, those are proper
36 evidence. They are certainly within the Rules of Evidence
37 applicable in this proceeding.

38 MR. STUBCHAER: We will accept them.

39 MR. VOLKER: We will get you the date of that map.
40 We have the full map. It is somewhere in this room and
41 certainly the Board can take judicial notice that it is a
42 USGS map which has a legend on it.

43 MR. STUBCHAER: I understand that, but it still will
44 be, as far as I am concerned, illustrative.

45 Okay, I guess that's it.

1 MR. VOLKER: Thank you.

2 MS. KATZ: We might note for the record, Mr. Volker,
3 the USGS topographic map is already in evidence as part of
4 the Board's files and the application map.

5 MR. STUBCHAER: Is there only a USGS map? Sometimes
6 they come out, there are many editions.

7 MR. LAVENDA: We need the date of the map.

8 MR. STUBCHAER: Not only the date the map was
9 originally published --

10 MR. LAVENDA: The update of the map.

11 MR. STUBCHAER: Before you leave, if you haven't
12 signed on the sign-up sheet which is there on the table on
13 the clipboard, please do so, and that applies to anyone.
14 We would appreciate it if you would sign up if you haven't
15 done it before.

16 MR. LAVENDA: If anyone is leaving and has occasion
17 to be here on Monday, there will be a reconvening of this
18 hearing. Originally we stated three days.

19 MR. STUBCHAER: We announced that yesterday and I
20 will announce it again. I hate to use the word *continue*
21 because it has a dual meaning, but this hearing will
22 continue on Monday at 9:00 a.m. here.

23 But we are not going to recess right now. I want to
24 try to get another witness in if we can in the time
25 remaining before five o'clock.

26 Mr. Gallery.

27 MR. GALLERY: It has to be at nine o'clock on Monday
28 rather than ten?

29 MR. STUBCHAER: Yes, it is at nine o'clock Monday.

30 Mr. Creger, would you like to give your testimony
31 today?

32 MR. CREGER: Mr. Chairman, I would appreciate it --
33 as a first-timer here, I have learned a lot in the last two
34 and a half days, and I would like the opportunity over the
35 weekend to do my summary.

36 I also think what I wish to testify on would fit in
37 more appropriately with the Sierra Club Legal Defense Fund
38 technical presentation that will be made Monday.

39 You have juggled the schedule several times and one
40 more time doesn't seem like it would hurt, especially for
41 15 minutes.

42 MR. STUBCHAER: All right. As far as your fitting
43 in with them, you are not on their witness list.

1 MR. CREGER: No, but the testimony of theirs that I
2 have read is relatable to the testimony that I intend to
3 give.

4 MR. STUBCHAER: All right. Did anyone show up from
5 the Amador Chamber of Commerce? They weren't here
6 initially. They have a 20-minute presentation.

7 El Dorado National Forest is not here. They don't
8 have all their witnesses here.

9 Amador County Water Resources, you have a 60-minute
10 presentation, so would you want to begin for 20 minutes, or
11 would you prefer to wait?

12 MR. GALLERY: I prefer to wait. My people are not
13 here, Mr. Stubchaer. We assumed we would come in Monday
14 morning.

15 MR. STUBCHAER: All right. Does staff have any
16 business to bring up at this time?

17 MR. LAVENDA: No.

18 MR. STUBCHAER: We will recess until Monday morning
19 at nine o'clock.

20 (Evening recess)

21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40